

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :
6 vs. : No. 3:15-cr-00015-LRH-VPC
7 SHAUN JERMAINE ESTES, :
8 Defendant. :
9

10
11 TRANSCRIPT OF EVIDENTIARY HEARING (Day 2)
12 (Pages 175 through 295)

13 March 31, 2016

14 Reno, Nevada

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1 RENO, NEVADA, MARCH 31, 2016, 8:42 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Good morning. Have a seat, please.

6 All right. The record will show we are
7 reconvened in this hearing at this time. And I see that
8 Detective Moore is on the stand. And I don't recall who
9 was questioning when we concluded yesterday.

10 MS. RACHOW: Good morning, Your Honor. We were
11 mid through Detective Moore's cross-examination. But an
12 issue arose so we recessed earlier. I'd like to address
13 that with the Court. And I do have the -- I'd like to
14 renew my objection to the phone records.

15 THE COURT: Okay. Go ahead, please.

16 MS. RACHOW: Thank you, Your Honor. As Your
17 Honor recalls, last night it came up that there may have
18 been a second screen that the detectives reviewed prior to
19 making contact with Mr. Estes.

20 I asked Amtrak to pull the complete reservation
21 details for Mr. Estes and had this officer review them as
22 well as the other Amtrak officer.

23 Now, this reservation detail is not in the same
24 format that they could see it. But this was provided to
25 defense as soon as I got it last night via email.

1 The only additional information that they drew
2 from the reservation, the totality of the reservation
3 history, was the date of the initial purchase, which was
4 11/29, that they had handwritten on to the sheet that was
5 discussed in court yesterday. That was provided in two
6 separate documents to defense counsel. An actual printout
7 that was Bates stamped number 8, and then a photocopy that
8 was Bates stamped number 10, both of these clearly have the
9 date written on it.

10 And Detective Moore is expected to testify he is
11 the one who wrote that date on those notes.

12 Moving on to the phone records, the
13 representation was made to the Court yesterday that none of
14 the phone records contained --

15 MS. GORMAN: Your Honor, I'm going to -- the
16 Court asked that the government address this in writing,
17 unless I'm mistaken.

18 THE COURT: Yes, I've reserved your right to
19 object to that. I conditionally entered -- admitted the
20 phone records. I don't need new argument on it. You'll
21 have time to submit written points and authorities.

22 MS. RACHOW: Thank you, Your Honor. I just
23 wanted to be clear about that.

24 THE COURT: All right. And is there an
25 objection with regard to the additional record, Ms. Gorman?

1 MS. GORMAN: No, Your Honor. I don't believe
2 it's been sought to be admitted at this point.

3 THE COURT: That's correct. And you've had an
4 opportunity to review it?

5 MS. GORMAN: Yes, Your Honor. And just one
6 slight additional kind of similar housecleaning matter. It
7 also -- it came to our attention -- I was under the
8 impression that we weren't able to get the full reservation
9 details from this train. We had gotten the manifest, but
10 it just had names.

11 But it appears we could get full reservation
12 details for every single passenger to see whether or not
13 any others had these indicators. I don't know if that's
14 relevant at this point, but I'm just -- and I think we can
15 continue with cross-examination. But I anticipate there
16 might be a point in this hearing where they became
17 relevant.

18 The government, according to their opposition,
19 isn't going on a theory of reasonable suspicion, just clear
20 consent. So they may not become relevant unless the Court
21 maybe sees that as an avenue for relief for the government.

22 THE COURT: Okay.

23 MS. GORMAN: But they haven't raised it. So --

24 THE COURT: It strikes me that that's getting
25 out there into issues of relevancy that this hearing is not

1 focused upon.

2 But, in any event, it sounds like it's not a
3 problem at this time. So why don't we --

4 MS. GORMAN: No. I think --

5 THE COURT: Pick it up --

6 MS. GORMAN: -- unless the government goes on a
7 theory of reasonable suspicion, then --

8 THE COURT: Right.

9 MS. GORMAN: Yes. Okay.

10 TONY MOORE

11 recalled as a witness on behalf of the
12 Government, having been previously sworn,
13 was examined and testified as follows:

14 CROSS-EXAMINATION (RESUMED)

15 BY MS. GORMAN:

16 Q. Good afternoon, Detective Moore. Or good morning.

17 So, Detective Moore, we discussed yesterday that
18 you are part of the High Intensity Drug Trafficking Area
19 Task Force.

20 A. Yes.

21 Q. Is that right?

22 A. Yes.

23 Q. So part of your job is investigating and then
24 arresting people if they're transporting narcotics?

25 A. Yes.

1 Q. Okay. Or money from the sale of narcotics?

2 A. Yes. Or large amounts of currency.

3 Q. Well, you look at ticket information to decide who
4 to target for your investigations?

5 A. Yes.

6 Q. And one of the indicators you look for is purchasing
7 a ticket in cash?

8 A. Correct.

9 Q. And that's because cash is not traceable?

10 A. Yes.

11 Q. Okay. Now, Estes did not have that indicator; is
12 that correct?

13 A. That's correct.

14 Q. Okay. Now, another indicator is purchase of ticket
15 immediately prior to boarding. Now, Estes did not have
16 that indicator; is that right?

17 A. By "immediately," do you mean minutes? hours? A few
18 days prior is of interest to me.

19 Q. So I'm just going to ask you whether or not Estes
20 purchased his ticket nearly immediately prior to boarding?

21 A. What do you mean by "immediately"?

22 MS. GORMAN: Your Honor, Court's indulgence?

23 THE COURT: Yes.

24 BY MS. GORMAN:

25 Q. So, Detective Moore, I'll rephrase.

1 Would you say that a purchase of a ticket of
2 somebody -- of a passenger purchasing a ticket just prior
3 to boarding, or just prior to travelling, would be an
4 indicator for you?

5 A. Yes.

6 Q. Okay. Now, in your opinion, Estes had that
7 indicator?

8 A. Just prior to, no.

9 Q. Okay. And another indicator would be fictitious
10 information on a ticket?

11 A. Fictitious, yes.

12 Q. Okay.

13 A. That would be something we're interested in.

14 Q. Yes. So you have previously testified in a
15 deposition under oath that cash purchase, purchase of
16 ticket just prior to boarding, and fictitious information
17 are the three biggest indicators; is that correct?

18 A. That was in my deposition, yes.

19 Q. Okay. And Estes had none of these three?

20 A. (No audible response.)

21 Q. Now, Estes didn't also start his trip at an unmanned
22 station, did he?

23 A. No, he did not.

24 Q. Okay. So Estes didn't have that indicator?

25 A. That's correct.

1 Q. Okay. Now, you also observe people on trains and
2 platforms for indicators; is that right?

3 A. That's correct.

4 Q. And an indicator might be excessive nervousness?

5 A. Yes.

6 Q. Okay. Now, Estes didn't have that indicator?

7 A. Not that I observed.

8 Q. Okay. And Estes wasn't evasive as he walked through
9 the train station, was he?

10 A. Not that I observed.

11 Q. Okay. And Estes didn't react strangely to the
12 presence of a drug canine?

13 A. No.

14 Q. Okay. So I want to talk to you about the source of
15 these indicators. So are you aware of any research that
16 actually connects people's ticket purchasing behavior with
17 their likelihood of being a drug courier?

18 A. I'm aware that, based on experience of other drug
19 interdiction detectives, those indicators are what we look
20 for.

21 Q. So I'm just going to ask you, Officer, if you're
22 aware of any actual research --

23 A. No.

24 Q. -- about the connection? Okay.

25 Are you aware of any statistics about this

1 connection?

2 A. No.

3 Q. Okay. To your knowledge, does Amtrak keep
4 statistics?

5 A. I do not know.

6 Q. Okay. To your knowledge, does Reno Police
7 Department?

8 A. We do not.

9 Q. Okay. And you don't keep statistics?

10 A. No.

11 Q. Okay. And you have identified, in the past, people
12 as suspicious who have some of these indicators to find
13 evidence of no criminal activity?

14 A. That's correct.

15 Q. Now, you singled out Mr. Estes because of some
16 indicators on his reservation?

17 A. That's correct.

18 Q. Okay. And those indicators were different from the
19 ones we just discussed?

20 A. Yes.

21 Q. So the first indicator was that he booked his ticket
22 on November 29th for travel beginning December 2nd?

23 A. Yes. That's what I observed on the reservation.

24 Q. Okay. And that's three days prior to travel?

25 A. Yes. Which is of interest to us.

1 Q. Okay. So I'm just going to ask that you answer my
2 questions.

3 A. Okay.

4 Q. Now, could we agree that there's many reasons why
5 you would buy a ticket three days before travel?

6 A. Yes.

7 Q. It could be a family emergency?

8 A. Yes.

9 Q. It could be not getting money together on time?

10 A. Yes.

11 Q. Okay. Now, the second indicator was that somebody
12 else paid for Mr. Estes' ticket?

13 A. Yes.

14 Q. Okay. And you knew that someone else paid for the
15 ticket because his ticket was bought with a credit card?

16 A. That's correct.

17 Q. And, now, you testified that purchasing tickets in
18 cash is considered suspicious?

19 A. Yes.

20 Q. But a credit card is traceable; right?

21 A. Yes.

22 Q. And when you see a credit card reservation, you see
23 the name of the credit card owner?

24 A. That's correct.

25 Q. And their credit card number?

1 A. That's correct.

2 Q. And their billing ZIP code?

3 A. Yes.

4 Q. And all that is information about the purchaser.

5 Now, the purchaser here was Christina Rogers?

6 A. I believe so.

7 Q. Okay.

8 A. I would need to review the reservation to --

9 Q. You're welcome to do so. The reservation would be
10 Exhibit 115, if you have that in front of you and you need
11 it.

12 A. Yes, Christina Rogers.

13 Q. So you don't know if Christina Rogers is Mr. Estes'
14 wife?

15 A. No.

16 Q. You don't know if it's his mother?

17 A. Correct.

18 MS. RACHOW: Objection. Asked and answered.
19 This line of questioning was exactly asked yesterday
20 afternoon.

21 THE COURT: I believe it was. Sustained.

22 MS. GORMAN: So I'll move on, Your Honor.

23 BY MS. GORMAN:

24 Q. Now, the third indicator that you and Detective
25 Kurup used was that Estes was travelling from the eastern

1 part of the United States to California?

2 A. Yes.

3 Q. Okay. Now, the logic of that being an indicator was
4 that the entire state of California is a source of drugs?

5 A. It's -- yes.

6 Q. Okay. So it's your testimony the whole state of
7 California is a source of drugs?

8 A. It could be, yes.

9 Q. Okay. And all drugs get more expensive as you go
10 east?

11 A. No. That's, I would say, not correct.

12 Q. Okay. Detective, I'm going to just direct you to
13 your probable cause affidavit. That would be Exhibit 101.

14 So you prepared a probable cause affidavit in
15 this case?

16 A. Yes, I did.

17 Q. And you signed it under penalty of perjury?

18 A. Yes.

19 Q. Okay. And in it you discuss some of the indicators
20 at issue?

21 A. Correct.

22 Q. So did you or did you not write, "It is common for
23 persons to use the Amtrak train for transporting illegal
24 drugs and other contraband between California, which is a
25 known source area for illegal drugs, and the Eastern United

1 States, where drugs can be sold for larger profit"?

2 A. I did write that.

3 Q. Okay. But it's your testimony now that not all
4 drugs are more expensive as you go east?

5 A. It's the word "all." I don't agree that all drugs
6 are.

7 Q. Okay.

8 A. I -- may I explain?

9 Q. So you'll have a chance to explain on redirect
10 examination.

11 A. Okay.

12 Q. So but that is what you wrote in your sworn
13 deposition?

14 A. I --

15 Q. Or in your sworn affidavit?

16 A. I did not write that all drugs were.

17 Q. Did you write the word "drugs"?

18 A. Yes.

19 Q. Did you qualify which drugs?

20 A. No.

21 Q. Okay. So and that was the logic of this being an
22 indicator.

23 Now, you've been to trainings on international
24 drug interdiction; is that right?

25 A. Yes.

1 Q. Okay. So you're aware that there's multiple drug
2 trafficking organizations that traffic drugs?

3 A. Yes.

4 Q. Okay. There's Colombian drug trafficking
5 organizations; right?

6 A. I'm sure there are.

7 Q. Are you aware that there are Colombian drug
8 trafficking organizations?

9 A. I -- yes.

10 Q. Okay. Are you aware that there are Mexican drug
11 trafficking organizations?

12 A. Yes.

13 Q. Dominican drug trafficking organizations?

14 A. Yes.

15 Q. And different organizations use different
16 trafficking methods?

17 A. That's correct.

18 Q. And how the drugs move depend on what kind of drug
19 is at issue?

20 A. I don't necessarily think I can agree with that. I
21 think they're transported in all different ways, depending
22 on who's doing it and how far it's going.

23 Q. So depending on who the drug trafficking
24 organization is, that would impact how the drugs flow?

25 A. Not -- not on all occasions, no.

1 Q. Okay. So is it your testimony that all drugs are
2 trafficked the same way?

3 A. No. I think all drugs could be trafficked numerous
4 different ways.

5 Q. So all drugs could be trafficked numerous different
6 ways. Yes?

7 A. Correct.

8 Q. And they come from different parts of the world?

9 A. That's right.

10 Q. Okay. And you received training on what cities are
11 source cities?

12 A. Not necessarily.

13 Q. So you attended a conference on international drug
14 trafficking. Is that right?

15 A. Yes.

16 Q. So you're -- are you saying that at your training
17 you were never trained on what cities are considered source
18 cities?

19 A. We're just trained on case-by-case basis and what
20 indicators to look for, experiences of other interdiction
21 investigations.

22 Q. So you never specifically touched on what parts of
23 the country are considered sources of drugs?

24 A. Well, cities -- in my opinion, it could be any city.

25 Q. Any city could be a source of drugs?

1 A. Yes.

2 Q. So and is -- okay. So you testify -- or you wrote
3 in your probable cause affidavit that California
4 specifically is a source of drugs?

5 A. Yes.

6 Q. And in contrast to the Eastern United States --

7 A. It's a known --

8 Q. -- where drugs can be sold for profit?

9 A. It's a known source for drugs. And there could be a
10 lot of different known sources.

11 Q. So in your sworn affidavit you did talk about
12 California -- you isolated California as the source of
13 drugs.

14 A. They are what we deal with most.

15 Q. Okay. But there's other source cities out there?

16 A. I'm sure there are.

17 Q. Okay. But in your training, you don't know which?

18 A. It -- in my opinion, it could be any -- any large
19 city could be a source city.

20 Q. Well, you're aware that Miami is a source city for
21 drugs; right?

22 A. Yes.

23 Q. And that's because of Colombian drug cartels?

24 A. It --

25 Q. Generally?

1 A. It could be numerous different drug trafficking
2 organizations.

3 Q. Well, it's a point of arrival for South American
4 cocaine and heroin?

5 A. It --

6 MS. RACHOW: Objection --

7 THE WITNESS: Sure.

8 MS. RACHOW: -- relevance.

9 THE COURT: Sustained.

10 BY MS. GORMAN:

11 Q. Would you consider New York a source city?

12 A. Yes.

13 Q. Okay.

14 THE COURT: I think you've exhausted this
15 subject, Ms. Gorman. I'd like you to move to something
16 else.

17 MS. GORMAN: Well, Your Honor, may I ask one
18 other question about Little Rock here?

19 THE COURT: Yes.

20 BY MS. GORMAN:

21 Q. Is it your training that Little Rock, Arkansas, is a
22 source city?

23 A. It -- no, it's not my training.

24 Q. Okay. So Little Rock is where Mr. Estes actually
25 started his travel from; is that right?

1 A. That's correct.

2 Q. Okay. But you didn't know that at the time?

3 A. No, I did not.

4 Q. Okay. And he was travelling to Emeryville,
5 California?

6 A. Correct.

7 Q. Okay. And we now know that he was travelling from
8 Chicago on an emergency exchange voucher?

9 A. Yes.

10 Q. And Estes is travelling to California?

11 A. Correct.

12 Q. So under your theory of California being a source of
13 drugs, Estes would be travelling to the source; right?

14 A. Correct.

15 Q. Okay. So by that theory, he wouldn't be carrying
16 drugs?

17 A. Correct.

18 Q. And now everyone on Mr. Estes' train is travelling
19 west?

20 A. That's correct.

21 Q. So everyone on that train has at least this one
22 indicator?

23 A. That they're travelling to California?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. And to be clear, the ticket was in Mr. Estes'
2 true name?

3 A. May I ask what you mean by "true name"?

4 Q. Was Mr. Estes travelling under an assumed name?

5 A. No.

6 Q. Okay. Now, I want to talk to you about this
7 encounter from the beginning.

8 So Estes was the target of your investigation,
9 based on these indicators, before he ever got off the
10 train?

11 A. Yes.

12 Q. Okay. And you went and you looked for him in the
13 sleeper car at first?

14 A. Yes.

15 Q. Okay. And that was in room number 10?

16 A. Yes, it was.

17 Q. And you did that alone?

18 A. Yes.

19 Q. Okay. So did you knock on the door?

20 A. No.

21 Q. Okay. So how did you know that nobody was in the
22 room?

23 A. I don't recall if the door was open or if the door
24 was closed and the curtains were drawn, but I did not see
25 anyone in the room.

1 Q. So you didn't knock?

2 A. No. The room appeared empty.

3 Q. So you're testifying that the room appeared empty,
4 but you don't remember whether you tried to knock on the
5 door?

6 A. I wouldn't knock if I could see that no one was in
7 there.

8 Q. But you're testifying you don't know whether or not
9 the door was closed and the curtains were drawn?

10 A. I don't recall if the door was open or closed. If
11 it was closed, there's a window. So I would still be able
12 to see through that window.

13 Q. So you don't actually recall whether -- how you
14 found out that he wasn't in the room?

15 A. I observed that the room did not have a person in
16 it.

17 Q. But you don't know how you observed that?

18 A. Either through an open door or through a window on
19 the door.

20 Q. But you don't actually recall?

21 A. No.

22 Q. Okay. And it happened a year and a half ago?

23 A. That's correct.

24 Q. Okay. So you were there, though, without Officer
25 Kurup?

1 A. Correct.

2 Q. And you didn't have a picture of Shaun Estes?

3 A. No.

4 Q. So you didn't know who you were looking for?

5 A. No.

6 Q. Okay. So when you came out of the train then, you
7 saw Officer Kurup talking to what appeared to be a young
8 black man?

9 A. Correct.

10 Q. Okay. To the best of your knowledge, did Officer
11 Kurup go and try that room with you?

12 A. No.

13 Q. So how did you know that Mr. Kurup was talk -- or
14 Officer Kurup was talking to Shaun Estes?

15 A. I -- at the time, as you just said, he was talking
16 to a young African-American man. So I -- at that point, I
17 did not know --

18 Q. To the --

19 A. -- that he was --

20 Q. -- best of your knowledge, did Mr. -- or did Officer
21 Kurup have a picture of Mr. Estes?

22 A. He did not have a picture.

23 Q. So you don't know how he ended up talking to this
24 man over there?

25 A. How exactly, no, I do not know.

1 Q. Okay. And you were not there when Officer Kurup
2 actually approached Mr. Estes?

3 A. I was standing in the train when I observed him walk
4 up to him.

5 Q. Okay. So you observed him from the train?

6 A. Yes. The exit door.

7 Q. Okay. So then do you know how long they talked
8 before you got there?

9 A. I -- it was all happening at the same time that I
10 was walking back down to the door.

11 Q. Okay. So were you not there then, would you say,
12 for the first few minutes of their conversation?

13 A. Maybe the first few seconds.

14 Q. Okay. So you didn't see Mr. Estes smoking a
15 cigarette?

16 A. I did see him smoking --

17 Q. You did.

18 A. -- a cigarette.

19 Q. Okay. And were you there when Officer Kurup
20 displayed his badge?

21 A. Yes, I was.

22 Q. Okay. Did you hear how Officer Kurup was speaking
23 to Mr. Estes?

24 A. No, I did not.

25 Q. Okay. Did you hear Officer Kurup explaining his

1 reasons for contacting Mr. Estes?

2 A. No, I did not.

3 Q. Okay. Did you hear Officer Kurup asking for an ID
4 and ticket?

5 A. No.

6 Q. Okay. Did you hear Officer Kurup asking Estes about
7 whether he was trafficking drugs or money?

8 A. I did not.

9 Q. Did you hear Estes decline consent?

10 A. No.

11 Q. Okay. So, Detective Moore, I'm just going to point
12 you to your probable cause affidavit.

13 So you previously testified that you prepared
14 this probable cause affidavit?

15 A. I did.

16 Q. Okay. So in your probable cause affidavit, did you
17 not write, "Detective Kurup contacted Estes after he exited
18 the train and was smoking a cigarette"? Did you write
19 that?

20 A. I did.

21 Q. Okay. Let's see. "Detective Kurup explained his
22 reason for the contact and asked Estes if he was in
23 possession of illegal weapons, large amounts of drugs, or
24 large amounts of currency."

25 A. I did write that.

1 Q. So, now, you just testified you didn't actually
2 hear.

3 A. I specifically asked, when I was writing the
4 statement, about the circumstances of the contact.

5 Q. So you got the information for your sworn affidavit
6 from talking to the other officer?

7 A. Yes, I did.

8 Q. So you didn't personally observe any of this?

9 A. I did observe him. I did not hear him.

10 Q. So you wrote in your affidavit, "Estes advised he
11 was not in possession of any of these items but declined to
12 give consent for his sleeper room on the train to be
13 searched"?

14 A. Those are facts related to me from Detective Kurup.

15 Q. Okay. So your probable cause affidavit is not based
16 on your personal knowledge?

17 A. It's -- I would disagree. It was based on
18 statements directly from Detective Kurup to me.

19 Q. So I'm going to define personal knowledge for you.
20 And then you can tell me whether it was from your personal
21 knowledge.

22 A. Okay.

23 Q. Was it something that you actually personally heard?

24 A. No, it was not.

25 Q. Okay. So but you did write it in your sworn

1 affidavit?

2 A. Yes, I did.

3 Q. So I'll ask you again. Is your sworn affidavit
4 based on your personal knowledge?

5 A. Those -- the statements, no.

6 Q. Okay. And you signed this statement under penalty
7 of perjury?

8 A. I did.

9 Q. So did you see Mr. Estes on the telephone?

10 A. No, I did not.

11 Q. Okay. So, now, it was about 11:40 when you
12 approached Mr. Estes?

13 A. It was about 11:40. That's a -- are you asking
14 about the time that I wrote -- that's a general time that
15 we were there working.

16 Q. Okay. So you wrote this in your probable cause
17 affidavit, 11:40?

18 A. Yes.

19 Q. Do you have a reason now to doubt its accuracy?

20 A. Not at all.

21 Q. Okay. So when you -- so Mr. Estes, was he alone
22 with Mr. Kurup when you walked up to him?

23 A. Yes.

24 Q. Okay. Now, as part of police reports, officers
25 write down biographical information about people who they

1 arrest; is that right?

2 A. That's correct.

3 Q. Okay. Part of that information is phone numbers?

4 A. Correct.

5 Q. Okay. Can I direct you to Exhibit 102. Actually,
6 I'll direct to you your own exhibit, Exhibit 101, on the
7 first page.

8 A. Okay.

9 Q. Can you just tell me what phone number you had
10 written down for Mr. Estes' phone number?

11 A. Yes. The phone number written here appears to be
12 702-272-8072.

13 Q. So, Officer, you previously testified you have no
14 reason to doubt 11:40 is the accuracy of the time. Did you
15 just testify to that?

16 A. I have 11:40 for we were conducting drug
17 interdiction activities.

18 Q. Okay.

19 A. So we were conducting drug activities at 11:40.

20 Q. Okay. Do you remember if you spoke to anybody else
21 on that day?

22 A. I do not.

23 Q. Okay. So I'm going to just direct you to line 6780
24 on Exhibit 127.

25 A. You said Exhibit 127?

1 Q. Yes.

2 A. Where is this? Okay. And what line?

3 Q. 6780.

4 THE COURT: It doesn't appear on -- at least on
5 the screen that you have up as far as I can tell.

6 MS. GORMAN: Here. I'll move it.

7 THE COURT: All right.

8 THE WITNESS: Okay. I do see it.

9 BY MS. GORMAN:

10 Q. Can you tell me what the calling number is?

11 A. According to this record, the calling number is
12 702-272-8072.

13 Q. Can you tell me if that matches the number you wrote
14 on your police report for Mr. Estes?

15 A. I did not write this number. But it does match the
16 phone number listed on his booking form.

17 Q. Okay. So can you then tell me who the called number
18 is? What the called number is?

19 A. Called number is 1-415-368-9164.

20 Q. And can you tell me the date?

21 A. The date is 12/4 of 2014.

22 Q. Is that the date of your interaction with Mr. Estes?

23 A. Yes, it is.

24 Q. Can you tell me the time?

25 A. The time says 11:43:10.

1 Q. Okay.

2 MS. RACHOW: Your Honor, again -- and I
3 appreciate that the Court has given the government the
4 opportunity to respond to the phone messages in writing.
5 But one of the points that I wanted to make is that with
6 these phone records, they natively use Coordinated
7 Universal Time.

8 By default that means a day of the call details
9 are taken from 00:00:01 to 23:59:59 UTC, which may differ
10 from your intended time range due to your time zone. If
11 specific times other than our default are important to your
12 inquiry, please submit legal demands with the date range
13 timeframe --

14 THE COURT: What's your point, Ms. Rachow?

15 MS. GORMAN: So, Your Honor --

16 MS. RACHOW: My --

17 MS. GORMAN: -- I think I can address this.

18 THE COURT: What's your point?

19 MS. RACHOW: My point is I don't know if these
20 records were converted by the phone company to Universal
21 Time to Pacific Time --

22 THE COURT: What does that have to do with her
23 right to ask the question? Be seated.

24 MS. GORMAN: And, Your Honor, I will comment on
25 the universal standard time because actually --

1 THE COURT: You can comment on that in argument.
2 This witness doesn't know about how these records are kept
3 by the telephone company. We're wasting time here.

4 MS. GORMAN: That's true. And, Your Honor, I'm
5 just going to ask the witness to read into the record the
6 time zone because you can specifically ask for times as
7 opposed to universal standard time. And we have both
8 actually but --

9 THE COURT: You can do that.

10 BY MS. GORMAN:

11 Q. Specifically on this case, can you read when it says
12 "time zone" what it says?

13 A. The time zone has the letters and numbers "PST8PDT."

14 Q. Okay. So are you aware that PST stands for Pacific
15 Standard Time?

16 A. I've seen that before, yes.

17 Q. You've seen that before. Okay.

18 So is it still your testimony, by the way, that
19 Mr. Estes was not on the telephone when you approached him?

20 A. It's my testimony I did not see him on the
21 telephone.

22 Q. Okay. Now, Mr. Estes provided Mr. -- or Officer
23 Kurup a ticket ID on -- ticket and ID upon request; is that
24 right?

25 A. As related to me by Detective Kurup.

1 Q. Okay. So you didn't personally observe it?

2 A. No.

3 Q. Okay. So Mr. Estes showed that he was -- showed his
4 identification. Are you aware that he showed his an --
5 showed an identification from Arkansas?

6 A. He actually provided me with his identification
7 later when we were downstairs.

8 Q. Okay. So he provided -- so you were not present
9 during the taking of the ID and ticket?

10 A. When he presented them, no.

11 Q. Okay. You didn't choose to ask Mr. Estes why he was
12 travelling to California, did you?

13 A. I don't believe I did.

14 Q. Okay. Would living in Arkansas explain to you why
15 Mr. Estes was coming from Arkansas?

16 A. Yes.

17 Q. Okay. Did you ask him who he was planning to meet
18 in California?

19 A. I don't recall.

20 Q. Okay. Did you ask him about who -- the person who
21 bought the ticket, ask who they were?

22 A. I don't recall if I did.

23 Q. Could those answers have provided some information
24 to you that was relevant to your suspicions?

25 A. Yes.

1 Q. Okay. So, now, the ID and ticket of Mr. Estes were
2 taken as evidence; is that correct?

3 A. I'm not sure about the ID. The ticket, yes.

4 Q. Okay. Are you aware -- was the ticket jacket with
5 Mr. Estes at the time?

6 A. I believe it was.

7 Q. Okay. So that was preserved as evidence?

8 A. I believe so. I would have to actually observe it.

9 Q. So you believe that the ticket jacket was
10 preserved --

11 MS. GORMAN: So, Your Honor, at this -- we have
12 never received an actual ticket jacket of Mr. Estes in
13 evidence. And we have testimony that it was preserved.

14 MS. RACHOW: Your Honor, if I may? I believe
15 that the physical evidence is still in Reno Police
16 Department evidence. Defense has never requested to view
17 the evidence in the case.

18 THE COURT: All right. We don't have it here.
19 It can't be produced. The witness has testified he doesn't
20 recall whether there was one or not or what became of it.
21 That's probably a better description.

22 So let's move on.

23 BY MS. GORMAN:

24 Q. So, Officer, are you aware of when the ID and ticket
25 were collected as evidence?

1 A. The exact time, I'm not.

2 Q. Do you know who did it?

3 A. I -- it was either me or Detective Kurup.

4 Q. Okay. Do you remember who took photographs of them?

5 A. Detective Kurup.

6 Q. Okay. So, now, being a drug trafficker, Officer, is
7 a really serious crime; is that right?

8 A. Yes.

9 Q. And you're aware, at least through Kurup, that
10 Officer Kurup told Estes he was investigating him for being
11 a drug trafficker?

12 A. I don't know if he used that terminology.

13 Q. He made understood that he was investigating
14 Mr. Estes for transporting contraband?

15 MS. RACHOW: Objection. Beyond the scope of
16 this witness's knowledge. He's testified he couldn't hear
17 the conversation.

18 MS. GORMAN: Your Honor, he filled a probable
19 cause affidavit about this.

20 THE COURT: You can ask him about what's in his
21 affidavit.

22 BY MS. GORMAN:

23 Q. So you wrote in your probable cause affidavit
24 Detective Kurup explained his reasons for his contact; is
25 that right?

1 A. Yes.

2 Q. And he explained -- and he asked Estes if he was in
3 possession of illegal weapons, large amounts of drugs, or
4 large amounts of money?

5 A. Correct.

6 Q. Okay. Would those be serious offenses, in your
7 mind?

8 A. Yes.

9 Q. Okay. So, now, neither you nor Officer Kurup told
10 Mr. Estes he was free not to answer that question, did you?

11 A. Not that I recall.

12 Q. Okay. Did you or Officer Kurup tell Mr. Estes he
13 was free to leave?

14 A. No.

15 Q. Okay. Did you tell him he was free to end the
16 encounter?

17 A. No.

18 Q. Okay. And in response to Officer Kurup's questions,
19 did you clearly hear Mr. Estes tell you that he was not in
20 possession of illegal contraband or the currency made from
21 the sale of illegal contraband?

22 A. I did not hear him say that to me.

23 Q. Okay. Did you observe Mr. Estes acting nervous?

24 A. No.

25 Q. Okay. And it's your testimony that it's not true

1 that Mr. Estes' phone was ringing throughout this
2 encounter?

3 A. I did not hear it ring.

4 Q. Okay. So I'm just going to point you back to
5 Exhibit 127.

6 A. Okay.

7 Q. Starting at Exhibit 6787.

8 A. I see it.

9 Q. Can you tell me whether there is a call made to
10 Mr. Estes' telephone number at 11:53 p.m.?

11 A. According to this there is a number in the Calling
12 Number column as well as the Called Number column.

13 Q. Would that be a yes?

14 A. I don't know if a call is being made or not. I
15 don't have experience with this document.

16 Q. Okay. Can you just go to the next line then. Can
17 you tell me the time that's listed on the next line?

18 A. The next line says 11 -- the time is --

19 Q. Time?

20 A. -- 11:56:41.

21 Q. And then the next line?

22 A. 12:00:05.

23 Q. And then the next line?

24 A. 12:01:42.

25 Q. And then the next line?

1 A. 12:02:04.

2 Q. Okay. And would that be around the time you were
3 with Mr. Estes?

4 A. I believe so.

5 Q. Okay. So, now, after Mr. Estes told Officer Kurup
6 he wasn't trafficking drugs or drug money, did you end this
7 encounter?

8 A. Yes.

9 Q. You ended this encounter?

10 A. Yes.

11 Q. So you two walked away?

12 A. No. We contacted a canine officer.

13 Q. So it's your testimony that you ended the encounter
14 with Mr. Estes by calling a drug dog?

15 A. Yes. I don't believe we asked him to stay with us.
16 I believe he stayed there on his own.

17 Q. So I'm not asking what you believe Mr. Estes did.
18 I'm asking whether you ended this encounter.

19 A. We moved on to the next logical step, which --

20 Q. So, Officer, I understand that you think it's the
21 next logical step.

22 I'm just going to ask you whether you ended this
23 encounter?

24 A. Generally speaking, we didn't. We --

25 Q. You didn't.

1 A. -- were still there.

2 Q. Okay. You were still there.

3 So after he told you he wasn't trafficking
4 drugs, he was asked for consent to search through his room
5 and luggage?

6 A. Yes.

7 Q. Okay. And he did not consent?

8 A. That's correct.

9 Q. Okay. And he told you and Officer Kurup, "No, you
10 cannot search my room and luggage"?

11 A. I don't know if that -- those were his words.

12 Q. Well, Mr. Estes had the right to say no; right?

13 A. Yes.

14 Q. Okay. He had -- that's his constitutional right?

15 A. I agree.

16 Q. Okay. And Mr. Estes clearly asserted that
17 constitutional right?

18 A. I agree.

19 Q. Okay. Now, when someone asserts a right, is it your
20 practice to again later ask them to waive the right?

21 A. You know, under certain circumstances it might be.

22 Q. Okay. So it might be your practice.

23 So after Mr. Estes refused consent, you
24 testified he was free to end this encounter?

25 A. Can you repeat that question?

1 Q. After Mr. Estes refused consent, you just testified
2 you believed he was free to end this encounter?

3 A. Yes.

4 Q. Okay. So his belongings, though, were still in his
5 sleeper car?

6 A. Correct.

7 Q. Okay. And you were deploying a drug dog to his
8 sleeper car?

9 A. In a common hallway.

10 Q. Okay. And he had a 5-minute stop here in Reno?

11 A. I don't know the exact amount of time. But it was a
12 short stop.

13 Q. A short stop in Reno.

14 So after Mr. Estes denied consent, Officer Kurup
15 told him that you were going to deploy a police canine?

16 A. Yes.

17 Q. Okay. And also told him that if the canine alerted
18 on his room, all of the items in that room would be seized
19 and a search warrant would be obtained to search the items?

20 A. That is my understanding, yes.

21 Q. Okay. Well, then you guys contacted Officer Hill?

22 A. I believe Detective Kurup did.

23 Q. Okay. It was Detective Kurup that contacted Officer
24 Hill. Okay.

25 And Officer Hill and his canine were already at

1 the Amtrak station?

2 A. Yes.

3 Q. Okay. So you boarded the train with Mr. Estes?

4 A. I -- we boarded the train with our canine officer.

5 Q. Okay. And Mr. Estes was there?

6 A. I believe by choice. We --

7 Q. So I'm going to ask you to please not speculate
8 about whether my client had a choice or not. That's --

9 A. Okay.

10 Q. -- for the Court to decide.

11 A. All right.

12 Q. But I'm asking you if he was with you when you
13 boarded the train?

14 A. He was present.

15 Q. Okay. He was present when you boarded the train?

16 A. Yes.

17 Q. Now, can you describe the hallway of the Amtrak
18 train?

19 A. It's the hall -- the common hallway that we deployed
20 the dog in.

21 Q. How big is that hallway?

22 A. It's -- I'm estimating length. Maybe 50 feet. And
23 this is an abs- -- complete estimation. But it's -- it
24 goes down to the middle of the car with rooms on both
25 sides.

1 Q. How narrow is the hallway?

2 A. It's narrow. Maybe two to three feet wide.

3 Q. Does it comfortably fit two people?

4 A. No.

5 Q. So Officer Hill deployed his canine along that
6 hallway?

7 A. Yes.

8 Q. And that was the hallway that had Mr. Estes' sleeper
9 car?

10 A. Yes.

11 Q. Now, the dog did not alert on the room; is that
12 right?

13 A. That's correct.

14 Q. Now, without an alert, legally you have nothing; is
15 that right?

16 A. That's correct.

17 Q. You have no probable cause?

18 A. Correct.

19 Q. And have you ever been able to get a warrant from
20 the interest of a dog?

21 A. No.

22 Q. So have you ever tried to?

23 A. No.

24 Q. But you went ahead and told Mr. Estes that the
25 canine was showing a lot of interest in his room; is that

1 right?

2 A. That's correct.

3 Q. Okay. So you know that interest has no legal
4 relevance to your rights as an officer; correct? Did you
5 just --

6 A. Correct.

7 Q. -- testify to that?

8 A. Well, for probable cause, correct.

9 Q. So that does not give you a right to search his
10 stuff?

11 A. That's --

12 Q. The interest?

13 A. That's correct.

14 Q. Okay. But you chose to tell Mr. Estes that there
15 was dog interest in his room?

16 A. I did.

17 Q. And you did that because you wanted permission to
18 search his stuff?

19 A. I was just stating a fact.

20 Q. Just stating a fact.

21 So you wanted to tell Mr. Estes this legally
22 irrelevant fact. Is that your testimony?

23 A. Yes.

24 Q. Now, you chose not to Mirandize Mr. Estes before
25 telling him a dog showed interest in his room?

1 A. Correct.

2 Q. Okay. And, again, you didn't explain to him the
3 difference between an interest and alert?

4 A. That's correct.

5 Q. Okay. Now, minutes before you told Estes that a dog
6 showed interest in his sleeper car, Detective Kurup told
7 Estes that if the dog alerted on his sleeper car, you both
8 could seize his things and get a warrant; is that right?

9 A. Yes.

10 Q. Okay. And you learned about interest and alert
11 because you've received training as an officer?

12 A. I do know the difference, yes.

13 Q. And that's through your training as an officer?

14 A. Yes.

15 Q. Okay. Now, it's at this point that Officer Kurup
16 asks Estes again to consent to the search?

17 A. I did not hear that conversation. I know that they
18 were talking.

19 Q. Okay. So you didn't actually hear Mr. Estes give
20 consent?

21 A. No.

22 Q. Okay. So you wrote in your probable cause
23 affidavit, "Estes was advised of the circumstances and
24 subsequently gave voluntary consent for Detective Kurup to
25 search his room and its contents."

1 So are you testifying now that was not based on
2 your personal knowledge?

3 A. It's what was related to me from Detective Kurup.

4 Q. So this was related to you from another police
5 officer?

6 A. Yes.

7 Q. You did not personally hear any of this?

8 A. Those specific words, no.

9 Q. Okay. But you wrote them in your probable cause
10 affidavit?

11 A. Yes.

12 Q. Okay. Now, you're aware that Estes had asserted his
13 right not to consent to a search before you told him about
14 this canine interest; correct?

15 A. Yes.

16 Q. And you want your searches to be constitutional?

17 A. Yes.

18 Q. Okay. And you know that a prosecutor may one day
19 have to be in a courtroom just like this and prove that
20 consent was freely given? You're aware of that?

21 A. Yes.

22 Q. Okay. And that a prosecutor may have to come in
23 here and prove to this Court that consent was completely
24 voluntary?

25 A. Yes.

1 Q. And not the product of threats?

2 A. Correct.

3 Q. And not the product of coercion?

4 A. Correct.

5 Q. And Mr. Estes had already told you once he didn't
6 want you to conduct that search?

7 A. He told Detective Kurup, yes.

8 Q. Okay. Now, you work for the Reno Police Department;
9 right?

10 A. Yes.

11 Q. Okay. And you're familiar with permission to search
12 forms?

13 A. Yes.

14 Q. Okay. I'm going to show you Exhibit 112.

15 So you -- you're familiar with that form?

16 A. Yes.

17 Q. It's a permission to search form?

18 A. Yes, it is.

19 Q. Okay. Now, you elected not to use that form; is
20 that correct?

21 A. Correct.

22 Q. Okay. And you actually didn't have Mr. Estes
23 memorialize his consent in writing in any way?

24 A. That's correct.

25 Q. And that would be something, other than your word or

1 the word of another officer, that could be used to prove
2 that Mr. Estes actually consented to a search?

3 A. Yes.

4 Q. Okay. And to prove consent was voluntary?

5 A. Yes.

6 Q. Okay. Now, you also have an audio recording device?

7 A. I do.

8 Q. Okay. And that device is there to record
9 police/citizen encounters?

10 A. Yes.

11 Q. Okay. And if there's dispute about what was said or
12 happened, that's objective evidence?

13 A. Correct.

14 Q. Okay. And that's why you have one?

15 A. I have one. I don't always have it with me.

16 Q. Okay. But you made a decision that day not to
17 activate your audio recording device?

18 A. I don't believe I had it with me that day.

19 Q. Do you clearly remember whether you had your audio
20 recording device with you?

21 A. No.

22 Q. So you don't know?

23 A. (No audible response.)

24 Q. But we do know that no audio recording was made of
25 this encounter?

1 A. That's correct.

2 Q. And do you have a cell phone?

3 A. Yes.

4 Q. Is it a smartphone?

5 A. Yes.

6 Q. What kind of phone is it?

7 A. It is an iPhone.

8 Q. Okay. So can iPhones record?

9 A. They can.

10 Q. Okay. So you chose not to record this encounter?

11 A. That's correct.

12 Q. Now, you were involved in a forfeiture action in
13 this courtroom a few months before this search?

14 A. Yes.

15 Q. Okay. And that case had to do with whether or not
16 law enforcement could keep money they took from an Amtrak
17 passenger?

18 MS. RACHOW: Objection, relevance.

19 MS. GORMAN: Your Honor, this case happened four
20 months after. And the Court specifically noted in their
21 order that Amtrak was choosing not to re-

22 THE COURT: Well, you --

23 MS. GORMAN: And RPD.

24 THE COURT: You may ask about his knowledge
25 of that.

1 MS. GORMAN: Thank you, Your Honor.

2 BY MS. GORMAN:

3 Q. That case had to do with whether or not law
4 enforcement could keep money you took from an Amtrak
5 passenger?

6 A. Correct.

7 Q. And the issue in that case was consent?

8 A. Yes.

9 Q. Okay. And actually the parties had very different
10 accounts of what happened than the officers in that case?

11 A. Yes.

12 Q. Okay. And this Court found that the government
13 couldn't prove that the individual had freely consented to
14 a search?

15 A. I believe that was the ruling, yes.

16 Q. Okay. Are you aware that the Court specifically
17 noted that officers had elected not to memorialize consent?

18 A. I don't recall that.

19 Q. Okay. Well, did this investigation happen after the
20 Court made its ruling in that case?

21 A. Yes.

22 Q. Okay. And you still made the decision not to
23 memorialize consent in this case?

24 A. Yes.

25 Q. Okay. Now, just before Officer Kurup's search,

1 Officer Kurup directed Mr. Estes to retrieve his
2 personal-use marijuana out of his bag?

3 A. I don't agree with that.

4 Q. Okay. Do you recall that conversation?

5 A. I recall that -- yeah. Yes, I do.

6 Q. Okay. So you testified before that you saw
7 Detective Kurup leading Mr. Estes to his room; is that
8 right?

9 A. Yes.

10 Q. Okay. And then you testified they were both in that
11 sleeper car?

12 A. Yes.

13 Q. Okay. Now, the sleeper car rooms, those are about
14 three-by-six feet?

15 A. About, yes.

16 Q. Okay. And they were in that room alone?

17 A. In the doorway --

18 Q. Okay.

19 A. -- of it.

20 Q. Did you see what was happening?

21 A. No.

22 Q. Okay. So, now, Officer Kurup finds a firearm in his
23 search; is that right?

24 A. That's correct.

25 Q. And after finding the firearm, neither of you

1 Mirandized Mr. Estes at that point; is that right?

2 A. That's correct.

3 Q. Okay. And you have -- you actually affirmatively
4 represent to Mr. Estes no state laws have been broken?

5 A. As specifically about the firearm, no --

6 Q. So --

7 A. -- there had not been.

8 Q. So I'm going to just point you again.

9 So is it your testimony you didn't advise
10 Mr. Estes that no state laws had been broken?

11 A. I did advise him.

12 Q. Okay. So that was not true at this point, was it?
13 You -- I mean, had -- there was marijuana that was found?

14 A. I was specifically talking about the handgun.

15 Q. So I'm not asking sort of what your intentions were
16 when you said it. But you did advise Mr. Estes no state
17 law had been broken; is that right?

18 A. About the handgun.

19 Q. Did you -- so your testimony now is that you
20 specifically stated about the handgun?

21 A. Yes.

22 Q. Okay. So I'll direct you to Exhibit 102. That's
23 your partner's police report.

24 Now, it specifically says -- or Detective Kurup
25 specifically writes, "Detective Moore advised Estes that at

1 this time no state laws had been broken, but Estes was in
2 violation of Amtrak firearm policy."

3 Do you not recall saying that?

4 A. I was speaking specifically of the handgun.

5 Q. Do you recall saying generally that no state laws
6 had been broken?

7 A. Yes.

8 Q. Okay. Now, you also didn't know at the time whether
9 the gun was legally possessed?

10 A. No, I did not know.

11 Q. But after telling Mr. Estes no state law had been
12 broken, you asked if Mr. Estes would speak to you in the
13 downstairs area of the car?

14 A. Yes.

15 Q. Okay. And you did not advise him he had the right
16 not to speak with you?

17 A. That's correct.

18 Q. And all of Mr. Estes' belongings were removed from
19 his room; is that right?

20 A. Yes.

21 Q. Do you remember who removed his belongings?

22 A. Detective Kurup.

23 Q. Okay. And where was Mr. Estes at this point?

24 A. We were downstairs.

25 Q. Okay. So you, Kurup -- or Officer Kurup, and

1 Mr. Estes were together in the entry area of the lower
2 level?

3 A. Yes.

4 Q. Okay. And in front of Mr. Estes you called Reno
5 Police dispatch?

6 A. It was Reno Police records.

7 Q. Reno Police records. And that was in front of
8 Mr. Estes?

9 A. Yes, it was.

10 Q. Okay. And they advised that Mr. Estes had a prior
11 felony?

12 A. Yes.

13 Q. Okay. And then one of you placed Mr. Estes in
14 handcuffs?

15 A. I did.

16 Q. Okay. So after placing Mr. Estes in handcuffs, you
17 chose not to immediately read him his Miranda rights?

18 A. That's correct.

19 Q. Okay. And your testimony is while in the handcuffs,
20 but before Miranda, he made this unsolicited statement
21 about where he purchased a firearm?

22 A. Yes.

23 Q. Okay. So, now, while Mr. Estes is in handcuffs on
24 the train, one of you takes photographs of him; right?

25 A. Yes.

1 Q. Okay. Do you remember who that was?

2 A. I -- I believe it was Officer Kurup.

3 Q. Okay. So I'm going to show you what's been marked
4 as Exhibit 16 -- 116. So specifically B, I, and J.

5 So, now, some of these photo -- or one of these
6 photographs depicts Mr. Estes' arms in handcuffs. Is it
7 true that Exhibit 116J depicts Mr. Estes in the train in --
8 on the train and in handcuffs?

9 A. I do see that.

10 Q. Okay. And do you remember what Officer Kurup took
11 that photograph with?

12 A. I do not recall.

13 Q. Okay. So all of this was done while you weren't
14 Mirandizing him --

15 A. Correct.

16 Q. -- is that correct?

17 A. That's correct.

18 Q. Okay. Do you know why those photographs were taken?

19 A. All of them or one in particular?

20 Q. Why was this photograph taken of Mr. Estes in
21 handcuffs on the train?

22 A. I don't know why.

23 Q. Okay. So then Mr. Estes is not actually Mirandized
24 until after he leaves this train in Verdi; is that right?

25 A. That's correct.

1 Q. And after the transport unit arrives?

2 A. I don't know if the -- I don't recall if the
3 transport unit was there or not.

4 Q. Okay. Do you remember who Mirandized him?

5 A. I did.

6 Q. You did?

7 A. Yes.

8 Q. And you elected not to record that Miranda warning?

9 A. That's correct.

10 Q. And you elected to have Estes not sign a waiver of
11 his Miranda rights?

12 A. That's correct.

13 Q. Okay. And when he spoke to you after that, he told
14 you the same thing he had told you pre-Miranda?

15 A. Yes.

16 MS. GORMAN: I have no further questions, Your
17 Honor.

18 THE COURT: All right.

19 Redirect examination?

20 REDIRECT EXAMINATION

21 BY MS. RACHOW:

22 Q. Sir, with the area that the train is in, is it
23 commonly referred to as the train trench in Reno?

24 A. Yes, it is.

25 Q. And you've been working there approximately four

1 years?

2 A. Yes.

3 Q. Have you had reason to use your cell phone to try to
4 make phone calls while you've been down in that train
5 trench?

6 A. Many times.

7 Q. And can you tell us about the availability of
8 service while you're down in the train trench?

9 A. The service in the train trench is very
10 inconsistent.

11 Q. And what do you mean by very inconsistent?

12 A. At times where --

13 MS. GORMAN: Your Honor, I'm going to object.
14 This is, A, beyond the scope of cross-examination; and
15 unless he knows something specifically about the carrier
16 that we have at issue here, I don't think this is --

17 THE COURT: I --

18 MS. GORMAN: I don't think he's the witness to
19 say.

20 THE COURT: I don't think it's beyond the scope.
21 But I fail to see the relevancy.

22 MS. RACHOW: Your Honor, the relevance would be
23 that there's been much made that Mr. Estes is on the phone.
24 I think it's important to point out that in that area cell
25 phone service is very spotty.

1 With that I'll move on.

2 THE COURT: All right. Move on, please.

3 BY MS. RACHOW:

4 Q. Now, sir, one of the indicators regarding whether or
5 not you want to speak to someone is if a third party
6 purchases; is that correct?

7 A. Yes, it is.

8 Q. And if that third party uses a credit card, why
9 would that be of interest?

10 A. In our experience we've seen credit card fraud
11 indicators where a person will purchase a ticket using
12 someone else's credit card information.

13 Q. And you're not saying that because Mr. Estes had
14 these certain indicators on his ticket that you had
15 reasonable suspicion to approach him; is that correct?

16 A. No.

17 Q. What was your purpose in approaching him?

18 A. It was to ask to speak to him.

19 Q. And this is -- is this something you commonly do?

20 A. Yes.

21 Q. Do people tell you no?

22 A. Yes, they do.

23 Q. And what happens when people tell you "No, I don't
24 want to speak with you"?

25 A. We will normally end the contact. We might even

1 deploy a canine through that common hallway where the
2 person's room is.

3 Q. Is it common to deploy the canine regardless of what
4 answer you get?

5 A. More often if the answer is no, we'll deploy canine
6 in a common area.

7 Q. And in this specific case, when the decision was
8 made to deploy the canine, did you tell Mr. Estes he had to
9 stay with you?

10 A. No.

11 Q. Did you tell Mr. Estes he was not free to leave?

12 A. No.

13 Q. Did you tell Mr. Estes he specifically needed to be
14 upstairs where his items were?

15 MS. GORMAN: Your Honor, leading.

16 THE COURT: Sustained.

17 BY MS. RACHOW:

18 Q. What, if anything, did you tell Mr. Estes about if
19 his presence was required during the dog sniff?

20 A. I don't -- I don't recall telling him anything.

21 Q. Did you ever threaten Mr. Estes?

22 A. No.

23 Q. Do you feel you used coercion with Mr. Estes?

24 A. No.

25 MS. GORMAN: Asked and answered. Your Honor,

1 those are also legal conclusions.

2 MS. RACHOW: Your Honor, they were directly
3 asked to this witness on cross-examination, did you -- you
4 know, if you used threat, if you coerced.

5 MS. GORMAN: Your Honor, those questions were
6 never asked whether --

7 THE COURT: I don't recall that those were
8 asked.

9 It's clear that the officer has personal
10 feelings that he didn't use coercion.

11 BY MS. RACHOW:

12 Q. Do you know if you had your audio recorder that day?

13 A. I do not.

14 Q. Were you the primary officer for this contact?

15 A. No.

16 Q. Do you feel that you misled Mr. Estes about the
17 canine's --

18 MS. GORMAN: Well, Your Honor --

19 BY MS. RACHOW:

20 Q. -- behavior?

21 MS. GORMAN: -- that calls for --

22 THE COURT: That --

23 MS. GORMAN: That's beyond --

24 THE COURT: Sustained.

25 MS. GORMAN: -- inappropriate.

1 BY MS. RACHOW:

2 Q. Did you ever tell Mr. Estes the dog alerted on --

3 MS. GORMAN: Leading.

4 BY MS. RACHOW:

5 Q. -- his --

6 THE COURT: Sustained.

7 BY MS. RACHOW:

8 Q. What did you tell Mr. Estes about the canine?

9 A. I told him that the dog showed a lot of interest on
10 his room.

11 Q. Did you tell him anything else?

12 A. No.

13 Q. Did Mr. Estes ask you any questions?

14 A. No.

15 Q. With your probable cause statement, you testified
16 during cross that that is a combination of your
17 investigation and your partner's investigation; is that
18 correct?

19 A. That's correct.

20 Q. Is that common --

21 MS. GORMAN: Your Honor, that misstates the
22 testimony.

23 MS. RACHOW: I'll rephrase.

24 THE COURT: Sustained.

25 That will be stricken.

1 BY MS. RACHOW:

2 Q. When you fill out a probable cause declaration, as
3 you did in this case, what type of information do you use
4 to put in that probable cause affidavit?

5 A. The facts known to me.

6 Q. And are those just facts known of your own personal
7 observation?

8 A. No.

9 Q. What else do you include?

10 A. Information from other officers, victims, suspects.

11 Q. Is that common?

12 A. Yes, it is.

13 Q. And why do you do this?

14 A. It's to be thorough and complete.

15 Q. Now, there's been much discussion about a small
16 amount of marijuana in this case. Was that booked into
17 evidence?

18 A. Yes, it was.

19 Q. And with a small amount of marijuana, how do you
20 typically handle that?

21 A. It could be a number of ways. It could be with an
22 arrest, a citation, submitting for a warrant later.

23 Q. What makes you determine whether or not you're going
24 to arrest someone for a small amount of marijuana or if
25 you're going to give them a citation?

1 A. History of FTA or no history of FTA. Just the,
2 basically, indicators that this person will show up to
3 court.

4 Q. And with an FTA, is that a failure to appear?

5 A. Yes, it is.

6 MS. GORMAN: Your Honor, this is getting way
7 beyond the scope of cross-examination.

8 MS. RACHOW: Your Honor, this goes to the
9 questions about whether or not Detective Moore advised the
10 defendant if the state law had been broken.

11 THE COURT: Whether he's arrested, he's cited,
12 or the officers say, "You're free to go," it doesn't have
13 anything to do with whether or not there in fact was a
14 small amount of marijuana. You can ask about the small
15 amount of marijuana.

16 I think the subject matter of what the officers
17 did or didn't do has been covered. It was seized and
18 placed in evidence. He was arrested on the gun charge not
19 on the marijuana charge.

20 So let's move on.

21 BY MS. RACHOW:

22 Q. At the time that you knew that Mr. Estes was in
23 possession of a firearm, had you made the decision to
24 arrest him at that point?

25 A. No.

1 Q. Why?

2 A. He could be in legal possession of that firearm.

3 Q. And you chose not to give him his Miranda rights at
4 that time. Why?

5 A. Because I didn't know a crime was committed, and he
6 was, you know, free to leave.

7 Q. And when you say you didn't know a crime was
8 committed, in what are you referring to?

9 A. The firearm.

10 MS. RACHOW: Nothing further.

11 MS. GORMAN: Court's indulgence, Your Honor.

12 RECROSS-EXAMINATION

13 BY MS. GORMAN:

14 Q. Officer, you were asked on redirect examination
15 about credit card purchases.

16 A. Yes.

17 Q. Okay. So you previously testified that cash
18 purchases are one of the biggest indicators for you; is
19 that right?

20 A. Yes.

21 Q. And credit card is another way to pay for a ticket?

22 A. Yes.

23 Q. Okay. So in this case, did you ever find any
24 indication that the credit card used was fraudulent?

25 A. No.

1 Q. Okay. So did you check to see if the card had been
2 reported stolen?

3 A. No.

4 Q. Okay. Now, you testified that after you -- you just
5 testified on redirect that after you found the firearm
6 Mr. Estes was free to leave?

7 A. He could have walked away from me, yes.

8 Q. So you're testifying that you would have been
9 prepared to let him -- I mean, so the train is moving at
10 this point; right?

11 A. Yes.

12 Q. And he's on the train with the officers --

13 A. Yes.

14 Q. -- including you?

15 Okay. And so you were prepared if he said, "You
16 know, I want to go," to not call Reno dispatch and find out
17 about his priors?

18 A. Well, we could have -- at that point, had he chosen
19 to leave, I may have detained him. But he never chose to
20 leave.

21 Q. Okay. So you just testified he was free to leave;
22 and now you're testifying you may have detained him if he
23 tried?

24 A. Yes.

25 Q. Okay. So you also testified on redirect about the

1 source of information on your probable cause affidavits?

2 A. Yes.

3 Q. So you -- again, you signed those under penalty of
4 perjury?

5 A. I did.

6 Q. So when you're taking information from witnesses and
7 police officers, do you believe it's not important to write
8 the source of your information in your probable cause
9 affidavit?

10 A. I believe I did.

11 Q. You believe in your probable cause affidavit you
12 wrote the source of information?

13 A. Well --

14 Q. So I'm going --

15 A. -- I think --

16 Q. -- to just direct you to your -- to Exhibit 101.
17 And I'll give you a minute to read over it. You can take
18 your time.

19 A. Go on, please.

20 Q. Have you read it?

21 A. I do -- I have read it.

22 Q. Can you tell me where -- so you previously testified
23 that you got the information on what happened during the
24 conversation between Detective Kurup and Mr. Estes from
25 Detective Kurup?

1 A. Yes.

2 Q. Not because you personally observed it; right?

3 A. Correct.

4 Q. Can you tell me where in your probable affidavit you
5 wrote the source of your information?

6 A. Well, I don't -- I don't specifically state the
7 source of my information --

8 Q. So you don't --

9 A. -- in here -- in this probable cause statement. But
10 it did come from Detective Kurup.

11 Q. Okay. So do you believe it's important information,
12 as a person who investigates crime, where you get your
13 information?

14 A. Yes.

15 Q. From what source?

16 A. Yes.

17 Q. That's an important piece of information for a
18 prosecutor to know?

19 A. Yes.

20 Q. Okay. And for a defense attorney to know?

21 A. Yes.

22 Q. Okay.

23 MS. GORMAN: I have no further questions, Your
24 Honor.

25 THE COURT: All right.

1 Any further direct examination?

2 MS. RACHOW: No, Your Honor.

3 THE COURT: All right.

4 Detective Moore, you may step down. Thank you.

5 MS. GORMAN: And, Your Honor, my client needs a
6 few-minute break to go to the bathroom.

7 THE COURT: All right. We'll take a break for
8 10 to 15 minutes as may be necessary. Thank you.

9 COURTROOM ADMINISTRATOR: Please rise.

10 (Recess from 9:45 a.m. until 9:59 a.m.)

11 THE COURT: Have a seat, please.

12 All right. Next witness, please.

13 MS. RACHOW: No further witnesses from the
14 government.

15 THE COURT: All right.

16 MR. DOGAN: Your Honor, the defense would call
17 Officer Jayson Hill.

18 THE COURT: All right.

19 COURTROOM ADMINISTRATOR: Good morning. Can you
20 please come around here and remain standing.

21 Raise your right hand to be sworn, please.

22 You do solemnly swear that the testimony you
23 shall give in the cause now before the Court shall be the
24 truth, the whole truth, and nothing but the truth, so help
25 you God?

1 THE WITNESS: I do.

2 COURTROOM ADMINISTRATOR: Please be seated.

3 Please state your name and spell your name.

4 THE WITNESS: It's Jayson, J-a-y-s-o-n. Last of
5 Hill, H-i-l-l.

6 COURTROOM ADMINISTRATOR: Please tell us your
7 city and state of residence.

8 THE WITNESS: Sparks, Nevada.

9 THE COURT: All right.

10 Go ahead, please, Mr. Dogan.

11 JAYSON HILL

12 called as a witness on behalf of the
13 Defense, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DOGAN:

16 Q. Sir, what do you do for a living?

17 A. I work for the Reno Police Department --

18 Q. And --

19 A. -- Canine Division.

20 Q. And how long have you worked for the Reno Police
21 Department?

22 A. September 2005.

23 Q. And how long have you been a canine officer?

24 A. Since 2008.

25 Q. And is there specific training that you receive as a

1 canine officer?

2 A. There is.

3 Q. And what kind of training have you received?

4 A. I went through a 30-day handler course in Sanford,
5 North Carolina.

6 Q. Is there any other training that you receive in
7 terms of being a canine handler?

8 A. There is. Once a week we train as a canine unit.

9 Q. So aside from nationally attending the seminar in
10 North Carolina, have you attended any other seminars or
11 training for canines?

12 A. Yes.

13 Q. And what are those?

14 A. The HITS Conference, which is a national canine
15 officer's conference. It's usually about a three- or
16 four-day training.

17 Q. When was that?

18 A. The last one was actually about six months ago.

19 Q. And how long was that course?

20 A. I believe it was a four-day course.

21 Q. How often do you attend?

22 A. Once every couple years.

23 Q. Okay. And the one in North Carolina, when was that?

24 A. That was back in 2008.

25 Q. Aside from those two, is there anything else?

1 A. No. Just weekly training.

2 Q. Okay. And you have a canine dog?

3 A. Correct.

4 Q. And what kind of dog is it?

5 A. German Shepard.

6 Q. How large is the dog?

7 A. He's approximately 76 pounds I believe is what his
8 weight is.

9 Q. What is the dog's sex?

10 A. Male.

11 Q. And where was the dog acquired?

12 A. In Sanford, North Carolina.

13 Q. Okay. Now, I want to direct your attention to
14 December 4, 2014. Were you on duty that day?

15 A. Correct.

16 Q. And do you recall receiving a call from dispatch to
17 report to the Amtrak terminal?

18 A. Yes.

19 Q. And what time was that at?

20 A. That was around 11:00.

21 Q. And do you know specifically the time?

22 A. I believe the dispatch log was around 11:13 or
23 somewhere in there.

24 Q. Okay. And would it refresh your recollection if you
25 were able to look at the dispatch log in this case?

1 A. Absolutely.

2 Q. And would you please look at Defense Exhibit 107.

3 A. Okay.

4 Q. Let us know what time did you receive the call to go
5 out?

6 A. I arrived on scene at 11:13, Amtrak, 280 North
7 Center.

8 Q. Once you arrived on scene, what did you do?

9 A. The train wasn't there; so I waited on scene.

10 Q. While waiting on scene, did you enter the Amtrak
11 building?

12 A. Yes.

13 Q. Did you speak to anyone?

14 A. I saw Madhu and Tony.

15 Q. And did you speak to them?

16 A. Yes.

17 Q. Concerning what?

18 A. Just everyday stuff that -- we didn't speak anything
19 specific about anything.

20 Q. Were you there as part of a drug interdiction team?

21 A. Yes.

22 Q. And both Detectives Kurup and Moore were part of
23 that team?

24 A. Correct.

25 Q. And you were a piece of that team?

1 A. Correct.

2 Q. Okay. All three of you are in that building. Are
3 you discussing certain individuals that you would be
4 investigating?

5 A. No.

6 Q. No conversation about an investigation?

7 A. No. I don't get involved with their investigation.
8 I don't run tickets. I don't handle that side. I strictly
9 handle a dog.

10 Q. Were you waiting for the train?

11 A. Yes.

12 Q. Once the train arrived, what did you do?

13 A. I walked back outside, retrieved my dog while the
14 other two went downstairs.

15 Q. Downstairs -- what do you mean by downstairs?

16 A. Because the upper level of the Amtrak is where kind
17 of a -- where the employees' area is. That's where we
18 wait. And then once the train arrives, you proceed
19 downstairs and go out to the platform where the train is
20 because we have a trench.

21 Q. Did they direct you to go get your canine?

22 A. No.

23 Q. Were you directed to run your dog?

24 A. I was asked to -- at a later point, to run my dog
25 down a hallway.

1 Q. And at what point were you asked to run your dog?

2 A. Whenever the train arrived. It was shortly after
3 the train arrived, several minutes after the exact time
4 Amtrak arrived.

5 Q. And you use your dog --

6 A. Because they board the train. I stay outside. And
7 I walk my dog up and down the platform. And I'll go in and
8 out of the luggage cars until they contact me and say,
9 "Hey, can you run a hallway?" Or a certain piece of
10 luggage.

11 Q. And why do you use your dog?

12 A. What's that?

13 Q. Why do you use the dog? What is the dog's purpose
14 in all of this?

15 A. He's a narcotic drug dog. He's trained to detect
16 drugs.

17 Q. And dogs -- your canine can also be used for other
18 purposes as well; right?

19 A. Patrol, yeah.

20 Q. And it can be used for -- as a show of force?

21 MS. RACHOW: Objection --

22 THE WITNESS: No.

23 MS. RACHOW: -- calls for a leading -- or legal
24 conclusion. Also is leading.

25 THE COURT: Overruled.

1 BY MR. DOGAN:

2 Q. Your canine can be used as a show of force?

3 A. If somebody wants to perceive it that way. But he's
4 a pretty friendly dog. We do public demonstrations,
5 school, preschools.

6 Q. For example --

7 A. He's a very friendly dog.

8 Q. -- canines can be used for crowd control; correct?

9 A. Could. But he's not used as that.

10 Q. But canines are used for crowd control?

11 A. I'm sure some canines are. My dog is not.

12 Q. Okay. And they can also be used to catch suspects?

13 A. Correct.

14 Q. And using canines, there's always a risk that a
15 canine will bite a person?

16 A. Could. He's an animal.

17 Q. And canines are intimidating?

18 MS. RACHOW: Objection. Leading.

19 THE COURT: Sustained. Please limit the leading
20 questions.

21 MR. DOGAN: Your Honor, at this point I'm going
22 to request leave of the Court under Federal Rule 611(c):
23 Generally leading questions are not permitted on direct
24 examination; however, the Court should allow leading
25 questions when a party calls a hostile witness, an adverse

1 party, or a witness identified with an adverse party.

2 I think it is clear that Officer Hill was part
3 of the arrest team and, therefore, part of the
4 government's --

5 THE COURT: Cut to the chase here. He's not a
6 hostile witness.

7 I'll allow you to ask some limited questions
8 because they help to move the case along. But I don't
9 expect that your examination should be based on all leading
10 questions.

11 MR. DOGAN: Okay.

12 BY MR. DOGAN:

13 Q. When you were at the stat- -- train station, did you
14 see who contacted Mr. Estes?

15 A. No.

16 Q. Let's talk about when you ran your dog. How many
17 sleeper cars did you run your dog through?

18 A. There's quite a few. I don't exactly know. There's
19 probably five or six approximately down a hallway.

20 Q. How long is the hallway?

21 A. I would say approximately 30 feet, 35 feet.

22 Q. And how wide are the hallways?

23 A. What are they, about three feet maybe?

24 Q. When you entered the train, was anyone with you?

25 A. No.

1 Q. When you were running the dog, were the other
2 detectives with you?

3 A. Usually the detectives stand on each side of the
4 hallway at the end of each -- each of the hallways, and so
5 nobody's in the middle so nobody can interfere with myself
6 nor my dog.

7 Q. And in this case specifically do you recall where
8 the other detectives were standing?

9 A. They were standing on one side of the hallway or the
10 other. Not -- I am not -- I don't know specifically.

11 Q. Okay. So you don't recall whether they were on --
12 or in the hallway on December 4, 2014, when you were
13 running your dog?

14 A. I don't recall. When I run my dog, it's usually
15 just me and my dog in the hallway.

16 Q. And do you --

17 A. It's narrow.

18 Q. And do you recall seeing Mr. Estes at all in the
19 train?

20 A. I remember seeing him when we went to Verdi to pick
21 him up.

22 Q. And when you ran your dog, was there anything of
23 interest to you?

24 A. No. There was no alert. So when there's no alert,
25 there's no PC. And so once my dog runs, there's no alert,

1 we leave. If there is, he can show interest. But interest
2 doesn't mean anything. Interest with him doing a head snap
3 or going back to something, courts have deemed that that is
4 nothing.

5 It is something that we can be, okay, why did he
6 do that? And sometimes we'll consensually contact somebody
7 and ask, "Hey, my dog sniffed twice at your room and went
8 back to your room but no alert, but we were just curious
9 why is the dog showing interest."

10 But neither here nor there, they can simply say,
11 "I don't know" or "There's nothing," and we continue on our
12 way. But with no alert that's no PC to detain anybody.

13 Q. So in this case did the dog show interest in
14 anything?

15 A. I remember him going back to the room, to a room,
16 when I was running down a hallway, and he showed some
17 interest.

18 But, like I said, it does not mean nothing.
19 There was no alert.

20 Q. So interest --

21 A. So there's no PC.

22 Q. So interest means nothing?

23 A. Nothing.

24 Q. And did you advise Detective Moore or Detective
25 Kurup anything about interest?

1 A. I believe it was Detective Kurup. I told him, "Hey,
2 at this room there was some interest." He kept -- he went
3 back several times to that room but continued on. It
4 doesn't mean anything. And they know that does not mean
5 anything.

6 They can, like I say, consensually talk to
7 somebody and ask, "Hey, why would our dog show interest in
8 something, but it doesn't mean nothing?"

9 Q. Did you speak to Detective Kurup about this matter
10 yesterday?

11 A. No.

12 Q. Did you speak to Detective Moore about this matter?

13 A. No.

14 Q. After I had spoken to you?

15 A. No. I --

16 Q. Did you read Detective Moore's probable cause sheet?

17 A. Not his probable cause sheet. I reviewed my Tiburon
18 report.

19 Q. I'm sorry?

20 A. I reviewed the Tiburon report.

21 Q. Whose Tiburon report?

22 A. Madhu Kurup's.

23 Q. Before testifying. When did you review those
24 reports?

25 A. I've reviewed them several times since I got

1 subpoenaed about a week ago.

2 Q. And did you meet with the government pertaining to
3 this case?

4 A. What do you mean?

5 Q. Did you meet with the government --

6 A. Who?

7 Q. -- pertaining to this case? The government
8 prosecutor.

9 A. Yes. I went to her office yesterday.

10 Q. Okay. And at what time did you go to her office?

11 A. About 5:30.

12 Q. And who was present when you spoke?

13 A. The two right here.

14 Q. Okay. Were Detectives Moore or Kurup present?

15 A. Moore was. He was -- he was still there while I met
16 with her, yes.

17 Q. And did you all have a conversation about this case?

18 A. No. We talked very briefly, and I left.

19 Q. And Detective Moore was present?

20 A. Yes.

21 Q. What was -- and you were discussing the facts and
22 the circumstances surrounding this case with Detective
23 Moore present; correct?

24 A. No specifics about the case. She told me that I
25 could not discuss anything in front of Detective Moore.

1 Q. And did Detective Moore --

2 A. And so I left.

3 Q. -- discuss anything with you --

4 A. No.

5 Q. -- about this case?

6 A. Absolutely not.

7 Q. And were you all in a conferences room?

8 A. No.

9 Q. Where was this at?

10 A. In, I believe it was, one of their offices.

11 Q. With Detective Moore present?

12 A. Yes.

13 Q. Do you remember whether any of the doors to the
14 sleeper cars were open?

15 A. No. Because I always -- before I run my dog, I
16 advise the detectives to make sure doors are either
17 closed -- they were closed enough to where my dog could not
18 get inside. Because I don't want my dog going inside.

19 Q. Okay. And is your testimony that none of the doors
20 were open?

21 A. No. They're either partially open or closed enough
22 to where my dog could not get inside.

23 Q. Why would the doors be partially open? Who does
24 that? Who decides that?

25 A. I don't know.

1 Q. Why would you want the door to be partially open?

2 A. So my dog cannot go inside.

3 Q. How about --

4 A. I don't want my dog disturbing --

5 Q. -- why not have the door fully -- go ahead.

6 A. I don't want the dog disturbing people.

7 Q. How about not -- why not have the door fully closed?

8 A. It's -- I would actually prefer that.

9 Q. But you just said partially open.

10 A. Yeah. Whether -- I want the door -- I said I want
11 the detectives to have the doors either partially opened or
12 closed all the way. I don't like an open door. So I just
13 don't want my dog going inside.

14 Q. Do you recall whether you wrote a police report in
15 this case?

16 A. No. There was no alert.

17 Q. But your canine was deployed; right?

18 A. He was ran. There is -- I log out at dispatch that
19 I'm there every day with my canine.

20 If there's -- it's simply I had my dog out, no
21 alerts, and there's nothing. If my dog does alert or does
22 do some type of activity with a PC, an alert, I document
23 it.

24 Q. But you're required to document -- your general
25 order requires you to document whenever the dog is removed

1 from your vehicle; isn't that correct?

2 A. At Amtrak -- we have an exception at Amtrak that I
3 am there every single day my full work week, and I have my
4 dog on lead with me all the time.

5 If he does engage and he is alerted to
6 something, a report will be generated. That's why I log
7 out with dispatch so there's a record of me and my dog out
8 at dispatch.

9 Q. You operate and conduct your police responsibilities
10 under the general orders of the Reno Police Department?

11 A. Correct.

12 Q. And you do not follow the orders of the Amtrak?

13 General orders of the Amtrak, any policies?

14 A. I don't know what Amtrak's --

15 Q. So the --

16 A. -- general --

17 Q. -- exception that you're speaking of, is this an
18 exception to you writing a police report under Reno Police
19 Department policies?

20 A. Yeah. If my dog would have alerted, it would have
21 been under Reno Police Department.

22 Q. And what policy is that?

23 A. That my dog alerted. There would have been a report
24 generated. But my dog did not.

25 MR. DOGAN: Your Honor, if I can have the

1 Court's indulgence?

2 BY MR. DOGAN:

3 Q. Sir, I'm going to direct your attention to Exhibit
4 Number 113.

5 I'm going to ask you to go to page number 12. I
6 don't believe the pages are numbered. So if you can just
7 count to page number 12.

8 THE COURT: There should be a Bates stamp in the
9 lower corner that would be numbered, Mr. Dogan. Can you
10 give him that Bates stamp.

11 MR. DOGAN: Your Honor, I don't have the Bates
12 stamp. If I could have the Court's indulgence.

13 THE COURT: That's okay. I'm just trying to
14 move this along.

15 MR. DOGAN: Okay.

16 BY MR. DOGAN:

17 Q. So we're on the same page then, the Bates stamp is
18 number -- page 12. And your general order says that
19 when -- canine deployment is defined as, "Any time the
20 police canine is removed from the police vehicle for any
21 legitimate law enforcement purpose"; correct?

22 A. Correct.

23 Q. And report writing, it requires you to write a
24 report. "Canine handlers will enter all canine deployments
25 into the authorized records keeping system. All

1 deployments shall be entered into the records system within
2 10 working days. If a deployment is not entered within 10
3 working days, the handler will notify the canine sergeant
4 as to why."

5 Is there -- that exception that you speak of, is
6 it contained in this general order?

7 A. No. This is just strictly between me, the canine
8 unit, and my supervisor. Every time we're at Amtrak, my
9 dog is always out there. And we're consistently out every
10 single day that we work there.

11 If there is an issue or anything that arises
12 with my dog pertaining to whether -- if he did bite
13 somebody or if he did alert on to something, we will
14 document that. But there was no alert. There was no -- he
15 didn't do anything. He was simply there scanning up and
16 down the train.

17 If he would have alerted to something or if he
18 would have caused an incident, then, yes, we would have
19 documented it. That's why I log out with dispatch that me
20 and my canine are out at Amtrak, and it's logged that way.

21 Q. How long were you on the train for?

22 A. Probably less than a minute.

23 Q. After you had spoken -- you spoke to Detective
24 Moore, correct, in this case?

25 A. When?

1 Q. When you were leaving the train, did you speak to
2 Detective Moore?

3 A. No. I usually get on the train, I go run my dog,
4 and I get off the train. I try not to have any
5 conversation. They're in plainclothes; I'm in uniform.

6 Q. Okay.

7 A. When they operate and work the train, we separate.
8 I don't want nothing to do with what they're doing, and
9 they don't do anything what I'm doing. They will simply
10 call or ask, "Can you run something?" and I will go do it.
11 And then I'd leave.

12 If there's no alert, I let them know no alert.
13 Because if there is an alert, there could be probable cause
14 to apply for a search warrant. Which in this case there
15 was not.

16 So I simply boarded the train, and I got off the
17 train. And I left the train; the train left.

18 MR. DOGAN: Okay. Nothing further, Your Honor.

19 THE COURT: All right.

20 Cross-examination?

21 CROSS-EXAMINATION

22 BY MS. RACHOW:

23 Q. Just very briefly.

24 Do you recall on December 4th letting either
25 Detective Kurup know or Detective Estes know that your dog

1 had shown interest?

2 A. I believe to Kurup or -- they were both right there.
3 And they usually watch. And they pick up, hey, why did my
4 dog turn around and go sniff something twice or three
5 times.

6 But in my -- as a handler, I have to advise them
7 did he alert or did he not alert. He did not alert.

8 Q. Did you advise him, and is it common for you to
9 advise, if the dog shows interest?

10 A. It is.

11 Q. Now, in this particular case, did you have any
12 contact with Mr. Estes?

13 A. No. Not until the train arrived in Verdi is when
14 I -- first time I met him.

15 Q. Did you have any idea who Mr. Estes was?

16 A. No.

17 Q. Is it common for the train interdiction team to ask
18 you to run your dog along a hallway?

19 A. Yes.

20 Q. Can you give an estimate of how often that occurs?

21 A. My dog is almost daily on the train.

22 Q. Thank you.

23 MS. RACHOW: I don't have anything further.

24 THE WITNESS: Okay.

25 THE COURT: Officer Hill, I'm curious. Why

1 would you then be dispatched out to Verdi after the train
2 is stopped --

3 THE WITNESS: I was not dispatched. I put
4 myself en route. Because I was at the train station. And
5 I ran my dog, got off the train. The train departed. And
6 then several minutes later I get a call from the detectives
7 stating, "Hey, we located a firearm, and we're going to
8 need patrol to meet us in Verdi, because we're going to
9 stop the train, and meet us in Verdi."

10 THE COURT: So going to Verdi --

11 THE WITNESS: So we had to go obviously pick up
12 Mr. Estes.

13 THE COURT: Is it more correct -- is it correct
14 to say that the primary reason for going to Verdi was --
15 had nothing to do with the dog?

16 THE WITNESS: No, absolutely not. There was
17 nothing in this whole entire case to do with the dog.

18 THE COURT: All right. I was just curious as to
19 why you would have gone out there.

20 THE WITNESS: Yeah. They contact me because I
21 assist them -- I'm a marked patrol unit, so --

22 THE COURT: Okay. Thank you.

23 THE WITNESS: -- since they were stopping the
24 train.

25 THE COURT: Any further questions, Mr. Dogan?

1 MR. DOGAN: Just one, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. DOGAN:

4 Q. From the time you got to the Amtrak station to the
5 time you left the Amtrak station, how long was that?

6 A. I arrived -- I mean, if you go back to this, I
7 arrived -- it says 11:13. We waited, because the train was
8 delayed, and so it was like another 15 minutes, another 15
9 minutes. The train only arrives for a short period of
10 time, whether it was approximately 10 minutes.

11 So however long the train was there and I was
12 there, I get on, do my thing, and I get off. And then the
13 train leaves. So however long the dispatch log is.

14 Q. Would it refresh your recollection to look at the
15 dispatch log --

16 A. Yeah.

17 Q. -- to determine when you left?

18 A. Yeah.

19 Q. Can you take a look at that --

20 A. Which one was it?

21 Q. -- Exhibit 113 again? Or 107. I'm sorry.

22 A. Yeah. Yeah. Shows me on scene at Amtrak at 11:13.
23 The train was delayed even further. And then at 12:19 it
24 states me going to Verdi.

25 Q. So you were there from 11:13 to 12:19?

1 A. Correct.

2 Q. At the Amtrak station?

3 A. Correct. And towards -- I would say around just
4 prior to 12:19 is when the train left. And it was there
5 for however long it stops, around 10 minutes. And so as
6 soon as the train departs, the train was leaving, I get a
7 call several minutes later stating that they had located a
8 firearm.

9 Q. So you were at the train station for a little over
10 an hour?

11 A. Correct.

12 MR. DOGAN: Court's indulgence.

13 Nothing further.

14 THE COURT: All right.

15 Any further questions?

16 MS. RACHOW: No, thank you, Your Honor.

17 THE COURT: All right.

18 Officer Hill, you may step down.

19 THE WITNESS: All right.

20 THE COURT: Thank you.

21 MS. GORMAN: So, Your Honor, the defense will
22 call Erika Dean.

23 MS. RACHOW: And, Your Honor, may this witness
24 be excused?

25 THE COURT: Yes, he may be.

1 MS. GORMAN: Yes.

2 COURTROOM ADMINISTRATOR: Please raise your
3 right hand.

4 You do solemnly swear that the testimony you
5 shall give in the cause now before the Court shall be the
6 truth, the whole truth, and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 COURTROOM ADMINISTRATOR: Thank you. Please be
10 seated.

11 Please state your name and spell your name for
12 the record.

13 THE WITNESS: My name is Erika Renee Dean,
14 E-r-i-k-a R-e-n-e-e D-e-a-n.

15 COURTROOM ADMINISTRATOR: Please tell us your
16 city and state of residence.

17 THE WITNESS: San Francisco, California.

18 THE COURT: Could you move the microphone a
19 little closer to her, please.

20 ERIKA RENEE DEAN

21 called as a witness on behalf of the

22 Defense, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. GORMAN:

25 Q. So, Ms. Dean, I know you speak really softly. And

1 so we'll just ask you to speak up a little more if that's
2 okay.

3 A. Okay.

4 Q. So, Ms. Dean, just basics. Where are you from?

5 A. San Francisco, California.

6 Q. Okay. And do you know Mr. Estes?

7 A. Yes.

8 Q. Okay. How do you know Mr. Estes?

9 A. From high school.

10 Q. Okay. Now I'm just going to jump right to do you
11 remember anything happening on December 4, 2014, that
12 was -- do you remember having a phone call with Mr. Estes
13 on December 4, 2014?

14 A. Yes.

15 Q. Okay. Do you remember who called who?

16 A. He called me.

17 Q. Okay. I'm just going to stop for a second and ask
18 you, Erika, what's your phone number?

19 A. My number is 415-368-9164.

20 Q. Okay. 415-368-9164?

21 A. Yes.

22 Q. And do you have your cell phone with you today?

23 A. Yes, I do.

24 Q. Okay. So can you tell me about what time you
25 received that phone call?

1 A. Around 11:30, noonish.

2 Q. Okay. 11:30, noonish. It's okay. It was a long
3 time ago.

4 So can you tell me how long that phone call
5 lasted?

6 A. It was very brief. It was like a couple minutes.

7 Q. Okay. And do you remember what happened on the
8 telephone to make it brief?

9 A. Yes. As we were talking someone approached
10 Mr. Estes, and they asked him -- or I guess they asked him
11 to get off the phone. And then so he told me that it was
12 the police and then he needed to call me back.

13 Q. Okay. So who hung up the phone?

14 A. He did.

15 Q. Okay. So what did you do after that? Were you
16 worried?

17 A. Yes.

18 Q. Okay. What was the tone of the -- so I know you
19 were talking to Mr. Estes. Were you able to hear another
20 person in the background?

21 A. Yes.

22 Q. Okay. Do you remember if there was a certain kind
23 of tone?

24 A. All I remember was a male, and it kind of sounded
25 like authority figure or something.

1 Q. Okay. So what did you do after that, Erika?

2 A. I waited a little while, and then I called him back.

3 Q. Okay. Do you remember how many times you called him
4 back?

5 A. Several times.

6 Q. Okay. So, Erika, did you -- did somebody -- anybody
7 pick up the phone any time that you called?

8 A. Yes. After I called, I repeatedly called, I just
9 pressed, like, redial. And then again, like I said, it was
10 about several times that I called. And then some -- a man
11 picked up the phone, and he said at that point that
12 Mr. Estes was not going to be detained and that he would
13 have him call me back.

14 Q. Okay. So, Ms. Dean, so you stated your phone number
15 was 415-368-9164?

16 A. That's correct.

17 Q. Do you have your ringer on today?

18 A. I don't think so.

19 Q. Okay.

20 A. I turned it off in the hall earlier.

21 Q. Would you like to put on your -- I mean, just so
22 this Court has some evidence that this is Ms. Dean's phone
23 number. Would you mind putting your ringer on?

24 A. Not at all.

25 Q. Okay.

1 MS. GORMAN: Court's indulgence.

2 THE WITNESS: Okay.

3 MS. GORMAN: Your Honor, I'm just going to put
4 my phone on the Elmo, if that's okay, so that anybody can
5 see what I'm doing so the record can so reflect.

6 I would like the record to reflect I'm dialing
7 415-368-9164.

8 THE COURT: It will so show.

9 (Cell phone ringing.)

10 THE COURT: The record will show that Ms. Dean's
11 telephone alerted, and she turned it off as a result of the
12 call.

13 BY MS. GORMAN:

14 Q. So, Ms. Dean, I'm going to show you what's been
15 marked as Defense Exhibit 127.

16 So, Ms. Dean, I'd like to direct you to line
17 6780, and the second column.

18 A. Okay.

19 Q. Can you tell me whether that's your number that was
20 the number that was called?

21 A. Yes, that's my number here and number -- or in B?

22 Q. Yes. And do you recognize the number before that?

23 A. Yes.

24 Q. Okay. And who do you recognize that number to be?

25 A. This should be Mr. Estes' number.

1 Q. Okay. And can I direct you to the date that that
2 call was made.

3 A. Okay.

4 Q. Okay. Do you recall that call being made
5 December 4th, 2014?

6 A. Yes.

7 Q. Okay. And does 11:43 -- according to your
8 recollection, is that accurate?

9 A. Yes.

10 Q. Okay. Skipping down to line 6788.

11 A. Okay.

12 Q. Is that your number that's the calling number?

13 A. Yes.

14 Q. Okay. And the line below that, is that your number
15 still?

16 A. Yes.

17 Q. And below that?

18 A. Yes.

19 Q. And below that?

20 A. Yes.

21 Q. Okay.

22 MS. GORMAN: Your Honor, we have no further
23 questions.

24 THE COURT: Okay.

25 Cross-examination?

1 CROSS-EXAMINATION

2 BY MS. RACHOW:

3 Q. Good morning.

4 A. Good morning.

5 Q. Now, obviously this call was quite a long time ago;
6 is that correct?

7 A. Yes.

8 Q. And you stated you spoke to Mr. Estes for a few
9 minutes; correct?

10 A. That's correct.

11 Q. What did you talk about?

12 A. Basically, in that moment I was trying to get some
13 advice from him. That's the best I can remember. I was
14 trying to get some advice from Mr. Estes. So he had called
15 me, but I remember that I was speaking to him.

16 Q. Do you remember exactly what you were talking to him
17 about?

18 A. Yeah. It was -- I was trying to find an auto
19 mechanic.

20 Q. And you were living in San Francisco at the time?

21 A. Yes, that's correct.

22 Q. Did you know where Mr. Estes was living?

23 A. No.

24 Q. You had no idea where Mr. Estes was living at this
25 time?

1 A. No. I mean --

2 Q. Would it surprise you that he was living in
3 Arkansas?

4 A. I'm sorry?

5 Q. Would it surprise you that he was living in
6 Arkansas?

7 MS. GORMAN: Your Honor, this is beyond the
8 scope of direct examination.

9 THE COURT: No, it's --

10 MS. RACHOW: Your Honor, it's cross-examination.

11 THE COURT: It's certainly -- the conversation
12 is certainly in the subject matter that fell within the
13 scope.

14 BY MS. RACHOW:

15 Q. So it's your testimony that you were speaking to
16 Mr. Estes about finding a mechanic?

17 A. Uh-huh.

18 Q. Is that -- I'm sorry. You have to answer --

19 A. Yes, that's --

20 Q. -- yes or no for the record.

21 A. Yes, that's correct, ma'am.

22 Q. But you didn't know where Mr. Estes was living at
23 the time?

24 A. No.

25 Q. What else did you ask him about?

1 A. That was pretty much it as far as my conversation
2 with him.

3 Q. Do you remember what else he said to you?

4 A. Well, he at some point -- like I said, there was
5 someone that approached Mr. Estes. I heard a male approach
6 him --

7 Q. I'm going to stop you right there.

8 You're on the phone with Mr. Estes; correct?

9 A. Uh-huh. That's correct.

10 Q. Do you know where he is physically at this point in
11 time?

12 A. Yes, ma'am, I did know.

13 Q. And how did you know that?

14 A. Because he told me.

15 Q. Okay. Now, you're on the phone, and you said you
16 heard somebody approach him?

17 A. Yeah.

18 Q. How did --

19 A. Yes.

20 Q. How did you hear somebody approach him? Did you
21 hear footsteps? What did you hear?

22 A. I heard a voice. I heard the person's voice.

23 Q. So you just heard a person's voice. You can't
24 really testify if that person was right -- was approaching
25 or was just there; correct?

1 A. Well, again, ma'am, I was on the phone with him.
2 And he stopped the conversation with me to speak with
3 whoever was speaking with him.

4 Q. And it was your testimony on the stand that you
5 heard, "Get off the phone." Is that correct?

6 A. I -- I don't remember that.

7 Q. Do you remember when the defense attorney asked you
8 what you overheard this voice saying?

9 A. Yes, I do remember that.

10 Q. And what did you say?

11 A. I didn't -- I don't remember saying or hearing that
12 I heard someone say, "Get off of the phone."

13 Q. Then that -- then I apologize. What did you hear?

14 A. I -- again, like I said, I heard a voice approaching
15 Mr. Estes. I can't be a hundred percent sure because
16 Mr. Estes' voice was more dominant than the other voice,
17 though. It -- again, it's like that voice was in the
18 background.

19 Q. So --

20 A. And --

21 Q. -- you just heard a background voice?

22 A. Yes.

23 THE COURT: Would you let the witness answer --
24 complete her answer before you go to your next question.

25 MS. RACHOW: I'm sorry.

1 BY MS. RACHOW:

2 Q. Are you finished?

3 A. Can you repeat the question again?

4 Q. What exactly did you hear?

5 A. I heard a man in the background speaking with
6 Mr. Estes.

7 Q. Now, you just testified that Mr. Estes was the
8 dominant voice; correct?

9 A. That's correct.

10 Q. What did you hear the male voice say?

11 A. I believe they were asking him to search his person.

12 Q. You believe?

13 A. Yes, ma'am.

14 Q. Or are you sure that's what you heard?

15 A. I'm certain, ma'am.

16 Q. Did you hear anything else?

17 A. I heard Mr. Estes, he told me that he needed to get
18 off the phone, and then he hung up pretty fast so...

19 Q. And that is the only thing you heard?

20 A. That's correct.

21 Q. Now, you testified that you called Mr. Estes back
22 several times; correct?

23 A. Yes.

24 Q. Did you ever get through?

25 A. Not with Mr. Estes.

1 Q. What would happen?

2 A. Some -- an officer answered the phone. I believe it
3 was an officer because it was a man.

4 Q. You don't know that it was an officer, you just know
5 that it was a man; is that correct?

6 A. Well, Mr. Estes said that it was the police when we
7 ended the call so...

8 Q. But you don't know who answered Mr. Estes' phone --

9 A. No.

10 Q. -- personally, do you?

11 A. I was not there. I could -- no.

12 Q. Now, you testified you called him several times and
13 nobody answered; is that correct?

14 A. Someone answered, it just wasn't Mr. Estes.

15 Q. Then did you only call Mr. Estes' phone once?

16 A. No.

17 Q. So what happened on the other times you called
18 Mr. Estes' phone?

19 A. It rang, and I immediately pressed redial.

20 Q. So nobody answered?

21 A. No one answered.

22 Q. Did his voicemail come on?

23 A. Again, I didn't allow it a chance to come on, ma'am,
24 I just pressed redial after I didn't get a response.

25 Q. How many times would the phone ring?

1 A. I can't remember the duration of the rings.

2 Q. Do you remember how many times you would let it ring
3 before hanging up to press redial?

4 A. No.

5 Q. Are you familiar with Defendants' Exhibit 106? I
6 believe it should be in a binder in front of you.

7 A. Yes.

8 Q. And are you familiar with that statement?

9 A. Yes.

10 Q. Did you write that statement?

11 A. It's typed. But yes.

12 Q. So you wrote this statement?

13 A. This is my statement, ma'am.

14 Q. But I'm asking if you actually drafted this
15 statement yourself?

16 A. It's been typed. I don't recall writing a
17 statement. I remember signing this.

18 Q. You signed this statement; correct?

19 A. Yes.

20 Q. But you don't remember writing a statement?

21 A. No.

22 Q. Do you know how this statement got to you?

23 A. I believe through email.

24 Q. From who?

25 A. I can't remember the person's full name that was

1 helping me at that time. But I remember his first name was
2 Dan.

3 Q. So somebody named Dan drafted this statement and
4 sent it to you and for your signature?

5 A. That's correct.

6 Q. Because I'd note -- is your first name spelled
7 correctly?

8 A. No, it's not.

9 MS. RACHOW: I don't have any further questions.

10 THE COURT: All right.

11 Redirect?

12 REDIRECT EXAMINATION

13 BY MS. GORMAN:

14 Q. Ms. Dean, do you recall speaking with our
15 investigator, Larry Hoffman?

16 A. Yes, I do.

17 Q. Okay. And did you tell Larry Hoffman about the
18 phone call incident with Mr. Estes?

19 A. Yes.

20 Q. Okay. And were you advised by Mr. Hoffman that he
21 was going to prepare a statement using your words?

22 A. Yes.

23 Q. And were you also advised by Mr. Hoffman that if
24 there were any corrections to be made, you could correct
25 them?

1 A. Yes.

2 Q. Okay. And then do you recall Mr. Hoffman flying to
3 San Francisco to see you?

4 A. Yes.

5 Q. Okay. And do you recall reviewing this statement?

6 A. Yes.

7 Q. And do you recall reviewing it for accuracy?

8 A. Yes.

9 Q. Do you recall making any changes to the statement?

10 A. Yes, I do. When I saw it in person, I saw the
11 bottom where my name is -- well, at the top too, obviously,
12 but it's -- my name is spelled with a K every time it
13 appears and -- well, with a C, but they -- I spell it with
14 a K, and they spell it with a C so --

15 Q. So you made that correction?

16 A. -- that was my correction.

17 Yes, that was my correction.

18 Q. And if there were any other corrections to be made,
19 would you have felt comfortable making them?

20 A. Yeah.

21 Q. And did you?

22 A. Yes. Oh, did I feel comfortable --

23 Q. Did you make any other changes?

24 A. Not that I could -- no.

25 Q. So the statement was accurate?

1 A. Yes, that's correct.

2 Q. And do you have any doubt about the accuracy today
3 of the statement?

4 A. No.

5 Q. And now, Ms. Dean, I understand it's been a year and
6 a half since this happened; right?

7 A. Yes.

8 Q. And are you trying, as you sit here today, to
9 recollect what happened as best you can?

10 A. Yes, I am.

11 Q. In terms of fundamental details, do you remember
12 receiving a call between 11:30 and noon from Mr. Estes
13 December 4, 2014?

14 A. Yes.

15 Q. Do you remember that call being interrupted?

16 A. Yes.

17 Q. Do you remember calling back repeatedly?

18 A. Yes.

19 Q. Do you remember calling back repeatedly because you
20 were scared for him?

21 A. Yes.

22 Q. Okay. Do you remember that the person who picked up
23 was not Mr. Estes?

24 A. Yes, I'm sure.

25 Q. Is the reason that you believe it was a police

1 officer because they told you that they were not detaining
2 Mr. Estes but needed to ask him questions?

3 MS. RACHOW: Objection, leading.

4 MS. GORMAN: Your Honor, at this point --

5 THE COURT: I'll allow the question.

6 THE WITNESS: Yes.

7 BY MS. GORMAN:

8 Q. Is that the reason you believed it was a police
9 officer?

10 A. Yes.

11 Q. Okay. In your experience, do nonpolice officers
12 talk about detaining people?

13 A. No. I've never even used that word until now, so,
14 yeah.

15 Q. Thank you so much, Ms. Dean.

16 A. You're welcome.

17 RECROSS-EXAMINATION

18 BY MS. RACHOW:

19 Q. Ma'am, did you just testify that you've never used
20 the word "detaining" until your testimony today on the
21 stand?

22 A. No, I didn't mean it as it pertains to the
23 testimony. I mean as far as dealing with this whole
24 situation.

25 Q. But "detaining" is not a word you would have used?

1 A. No.

2 Q. Thank you.

3 MS. RACHOW: I have nothing further.

4 THE COURT: Any further questions?

5 MS. GORMAN: No, Your Honor.

6 THE COURT: All right.

7 Ms. Dean, that will complete your testimony, and
8 you may step down. Thank you.

9 THE WITNESS: Thank you.

10 MS. GORMAN: Your Honor, we rest.

11 THE COURT: All right. Thank you.

12 Is there any further evidence on behalf of the
13 government?

14 MS. RACHOW: No, Your Honor.

15 THE COURT: All right. So this matter will
16 stand submitted.

17 There's one issue concerning the conditional
18 admission of the phone records. I'd like to have some
19 written points and authorities concerning the government's
20 objection to that.

21 What amount of time would you be comfortable
22 with, Ms. Rachow?

23 MS. RACHOW: Your Honor, I'd like to order the
24 transcript so I can point to specific instances in the
25 transcript about the objections. Because I believe there

1 are some inaccuracies with the phone records as
2 represented.

3 I do have an additional suppression hearing with
4 Your Honor this afternoon, and I anticipate that case going
5 to trial next week starting Tuesday.

6 Is there any way I could get until next Friday,
7 a week from tomorrow?

8 THE COURT: Yes. There's no problem with that.

9 MS. RACHOW: Thank you, Your Honor.

10 THE COURT: And then I'll give the defense three
11 days to respond to it the following week. So let's say
12 the Friday.

13 MS. GORMAN: What would that Friday be? I just
14 want to make sure.

15 THE COURT: Well, let's make it a one-week
16 period from when it's submitted to you. That way we don't
17 have to worry about counting weekend days or not.

18 MS. GORMAN: And is this Court going to allow
19 argument on this?

20 THE COURT: Would you like to argue? I
21 understand each party's position. But I'm certainly
22 willing to hear limited argument if you would like.

23 MS. GORMAN: I think an argument would be
24 appropriate in this case.

25 THE COURT: All right. Actually it would be --

1 I'd allow you to go forward, Ms. Gorman. You're requesting
2 the argument.

3 MS. GORMAN: Pardon me?

4 THE COURT: Do you want to -- it's your motion
5 to suppress.

6 MS. GORMAN: Yes.

7 THE COURT: It's the government's burden to show
8 it was a voluntary consent.

9 MS. GORMAN: So, Your Honor, I mean, as this
10 Court knows in the motion we put forth every possible
11 theory of suppression because obviously we don't know the
12 government's position.

13 And in it we attacked this drug courier profile
14 that was used by Amtrak. And this Court has heard lots of
15 testimony on this drug courier profile. I mean, that
16 profile is deficient under every body of law.

17 So I don't -- and I don't believe that the
18 government would argue, or at least didn't in their
19 opposition, that there's ever reasonable suspicion to
20 detain Mr. Estes. The government specifically waived that
21 argument in their opposition.

22 And their argument was that this was a
23 consensual encounter. So from the inception of the
24 encounter until the moment this gun was found, this is
25 purely consensual.

1 And to do that -- if the government is going to
2 rely on consent, this consent has to be valid, it has to be
3 voluntary, and it can't be made the threat of -- it can't
4 be under threat of coercion or under duress. And I think,
5 as so clearly demonstrated in this case, it was.

6 Mr. Estes was approached by a law enforcement
7 officer when he's on this -- the platform of a train
8 station. He's alone. I think we've heard a lot of
9 evidence that Mr. Estes was actually on the telephone,
10 although both officers have denied that throughout.

11 And, regardless, Mr. Estes is on this train
12 platform approached by these two officers. We submit he
13 was ordered to get off the telephone. And he was told that
14 he is the subject of an investigation.

15 There is a huge body of case law saying if
16 you're going to look at what a detention is, telling
17 somebody that they are the target or a specific interest in
18 terms of a criminal investigation is huge in terms of
19 whether a normal encounter escalates to a detention. So
20 here he was singled out for suspicion.

21 You heard testimony that they advised him that
22 he had indicators on his reservation that he was a drug
23 trafficker. These are really serious crimes.

24 And in response to that Mr. Estes is asked if he
25 will consent to a search. And there was unanimous

1 testimony he was unambiguous. He said, "No, I don't want
2 to be searched." And he had that absolute right under the
3 Fourth Amendment of the Constitution.

4 And the government tried to bring in the stuff
5 with Amtrak and signs. And the truth is Amtrak's policy
6 should be that he's offered a full refund if he doesn't
7 want to be searched. And that's not what happened. He
8 wasn't offered a refund and told he can take his bags and
9 go home. And he was pretty close to where he was going
10 anyway.

11 But in this case instead he was advised that
12 they were going to deploy a canine, and if canine alerted
13 then all of his items are going to be seized and searched
14 and the search warrant obtained.

15 And then he goes on to the train with multiple
16 officers. And he's separated from his belongings because
17 they're running a dog along this narrow hallway around his
18 sleeper car. And then the dog doesn't alert.

19 So these two detectives who so clearly want to
20 search Mr. Estes' belongings, they know now that they don't
21 have probable cause.

22 So what they do is they trick Mr. Estes, who is
23 not a law enforcement officer. And having just told him,
24 "If a dog alerts we're going to seize everything and we're
25 going to get a warrant," Detective Moore knowing absolutely

1 well from Detective Hill, from Officer Hill, from
2 everything that he has learned throughout his training and
3 experience in drug interdiction, he knows he has nothing
4 for probable cause.

5 But he chooses to go up to Mr. Estes, who
6 doesn't know these things, and say, "Hey, a dog showed a
7 lot of interest in your room," and to try to extract
8 consent from Mr. Estes that way.

9 Now, there's a dispute as to whether or not
10 there was ever a consent at all. And I don't think the
11 government has even crossed the burden of showing that
12 there was a consent, valid or invalid.

13 These officers elected, they made a decision,
14 "We're not going to record this interdiction. We have an
15 audio recording device, we have an iPhone, we have another
16 smartphone, we have pieces of paper, we have a permission
17 to search form."

18 There's an election to never memorialize
19 consent. And especially in a case where someone has
20 unambiguously said, "I don't want you to search me," and
21 asserted that constitutional right, the decision to not
22 memorialize consent I think is absolutely fatal, especially
23 as consent is disputed in this case.

24 But, regardless, if Mr. Estes did consent, if
25 this Court believes the officers that he eventually said

1 okay, after, after Detective Moore says, "Well, this dog
2 shows a lot of interest," that consent is not freely given,
3 it is not voluntarily given, it is the product of coercion,
4 it is the product of duress, and it is invalid under the
5 law.

6 And everything flows from that consent. His
7 search of his bag, his gun, everything flows from that
8 consent. So that's one basis is the consent is invalid.

9 But the second basis, and an alternative totally
10 independent basis, is that if Mr. Estes is seized during
11 this encounter, if he's seized, because the government has
12 not argued there's reasonable suspicion on this ticket
13 stuff, the government elected not to make that argument in
14 their opposition, so if Mr. Estes was seized at any point
15 before this, then any consent would be invalid, finding the
16 gun would be invalid, and everything else would be a fruit
17 of it. So there's multiple independent bases to suppress
18 this evidence.

19 And I think almost independently it's important
20 to note that you have this divergent set of facts. And we
21 provided this notice to the government in the form of our
22 motion. We don't often provide an affidavit from a client
23 or an affidavit from a witness.

24 But we're giving the government notice in
25 saying, "Hey, we believe that these two people were on a

1 phone call when your officers approached. We believe that
2 the officer made this person hang up the phone. We believe
3 that an officer picked up the phone."

4 Now, I didn't go and get consent from my client
5 to get his phone records. Instead what I did is I went to
6 the Court and I said, "Hey, this is the story that we are
7 telling." And before I had seen a record -- and this Court
8 knows because I had filed both a motion to suppress and a
9 motion to this Court, saying, "This is what we believe
10 happened and we believe there's going to be evidence in
11 here."

12 Now, the government has the same right to do
13 that as we do. They can seek a court order. And we had
14 definitely put this in issue in the case. But we chose to
15 find out the truth, knowing we -- it's a huge risk, using
16 my client's information to get something from the Court.
17 The moment I don't have that in the court record, I'm sunk.

18 But the Court record -- or the records that we
19 requested and that we received under subpoena with a
20 business record affidavit from T-Mobile, they literally go
21 moment by moment to the information provided to the
22 government and provided to the Court.

23 And they show that these officers were not
24 telling the truth. They just weren't. I mean, the
25 evidence is at this point just overwhelming. And it's

1 important that the Court have these records and the Court
2 consider the records because these are the only, at this
3 point, objective records that we have in this case.

4 So Your Honor has multiple, multiple bases on
5 which to suppress the evidence in this case.

6 In terms of the statements, both the statements
7 were in violation of Miranda. I think that the escalation
8 of events in this case, the deployment of the dog, the
9 three armed officers with my one lone client, the fact that
10 they were on this cramped train, the fact that Mr. Estes is
11 told that he's the target of this investigation, all of
12 that rises to a circumstance which would be analogous to an
13 arrest, even though there was not a formal arrest.

14 And there was an interrogation throughout. And
15 they elected not to Mirandize Mr. Estes. They elected to
16 do so while taking pictures of him in handcuffs on a train,
17 taking pictures of his tattoos, making calls in front of
18 him. That's a decision that they made in this case.

19 But even if they had, again, those statements,
20 they're still the fruit of an illegal seizure. They're
21 still the fruit of this illegal search. So there's three
22 independent bases to say that these statements don't come
23 in.

24 So Your Honor has multiple bases in the Fourth
25 Amendment, the Fifth Amendment, the due process clause to

1 say that what happened in this case was unconstitutional
2 and that the government did not and cannot carry their
3 burden in this case and that the evidence against
4 Mr. Estes, the firearm, his statements, that those should
5 be suppressed.

6 So Court's indulgence, Your Honor?

7 Your Honor, unless the Court has any additional
8 questions, that will -- we'll submit on that.

9 THE COURT: No, I don't. And I appreciate your
10 argument.

11 Ms. Rachow?

12 MS. RACHOW: Your Honor, just very briefly. I
13 know Your Honor is very aware of the case law and has
14 reviewed the briefs and has obviously heard the testimony.

15 The one thing I do want to point out is the
16 defendant was not subject to cross-examination, and he did
17 not submit an affidavit. It's a statement. The Court
18 should give no weight to that statement because the
19 government did not have the opportunity to cross the
20 defendant.

21 And with the phone records, the one thing they
22 can't tell you is they can't tell you if the phone ringer
23 was on. So there is no way to say that the officers are
24 lying, that they didn't hear the defendant's phone ring
25 because there's no evidence the phone ringer was on.

1 The government believes those phone records
2 actually show that several of those were text messages, not
3 phone calls.

4 Your Honor, the government has submitted that
5 this is not an encounter where the defendant was seized, it
6 was a consensual encounter.

7 THE COURT: Well, let me ask you the one
8 question. Let's assume that the witness was being
9 completely truthful. She said that at one point in time
10 she called and the officer, who she didn't know who he was,
11 answered the phone, told her that it appeared that
12 Mr. Estes was okay and that she would be able to talk to
13 him later.

14 Now, if the phone's not ringing, how would the
15 officer know to answer that phone?

16 MS. RACHOW: Your Honor, from the timeline, I
17 believe that was after Mr. Estes -- the gun had been found,
18 and he was detained at that point because he was going to
19 be removed from the train due to the firearms policy. But
20 they chose not to Mirandize him, and they didn't ask him
21 any questions regarding his --

22 THE COURT: No, but I'm just --

23 MS. RACHOW: -- possession of the gun.

24 THE COURT: -- asking you the simple question.

25 It suggests to me that the phone was ringing and

1 that's why the officer picked it up, if you believe the
2 witness.

3 MS. RACHOW: And, Your Honor, that is certainly
4 the Court's decision regarding the witness' credibility.

5 But the Court also needs to take into account
6 where the initial contact with Mr. Estes was. It was down
7 in the train trench. You have the train coming in. You're
8 having people.

9 If the Court wants to believe that the officers
10 were not truthful in their statement that they didn't hear
11 the phone ringing, that is the Court's decision. But the
12 officers clearly testified that they did not see Mr. Estes
13 on the phone at the time they approached him, which can
14 easily be reconciled with Mrs. -- or Ms. Dean's testimony
15 regarding when the phone call happened.

16 And it's the government's recollection that she
17 waffled on the stand as to what she said in her direct, as
18 to her cross and in her statement.

19 But, again, credibility is up to the Court.

20 But, Your Honor, there is no indication from
21 either of the officers that they heard the defendant's
22 phone ring. They clearly testified they did not take his
23 phone, they were not going through his phone.

24 And so with that, unless the Court has any other
25 questions, I'm going to submit on the briefs and the

1 testimony.

2 THE COURT: All right. That's fine.

3 Although I do want to say for the benefit of
4 Detective Moore, he did not testify that he heard at any
5 time a consent from Mr. Estes; is that correct?

6 MS. RACHOW: That is correct, Your Honor.

7 THE COURT: And so the issue of consent rests
8 solely and exclusively upon the testimony of the Amtrak
9 Detective Kurup; is that correct?

10 MS. RACHOW: That would be correct. Detective
11 Moore testified that he was not close enough to hear the
12 conversation between Mr. Estes and Detective Kurup.

13 THE COURT: All right. Thank you.

14 MS. GORMAN: Your Honor, may I reply briefly?

15 THE COURT: Yes.

16 MS. GORMAN: So I'm just -- I think that two
17 pieces of evidence were misstated. And I have an
18 obligation to correct them.

19 So Ms. Rachow just said she believed that it was
20 after the arrest of Mr. Estes --

21 MS. RACHOW: Objection. I did not say arrest.
22 I said detention.

23 MS. GORMAN: After the detention of Mr. Estes
24 that these phone calls were received?

25 THE COURT: Well --

1 MS. GORMAN: I just want to direct the Court --

2 THE COURT: I understand your point.

3 MS. GORMAN: Okay. I just think the Court
4 should actually take note of the times on the police report
5 and also the times on these phone records, which contradict
6 that.

7 I also think that it's important to know that
8 there was essentially no evidence of why these officers
9 contacted Mr. Estes to begin with, which is of concern.

10 We have Detective Moore, who is going in to look
11 for Mr. Estes in his sleeper car, and he comes out and he
12 sees his partner talking to essentially a young black male,
13 and they're -- nobody is saying that they have a picture of
14 Mr. Estes. Nobody knows how this would be Mr. Estes. He's
15 not in his sleeper car. And that, I think, should also be
16 of some concern.

17 And I think even though the government is
18 arguing that this is consensual from beginning to end, I
19 still think it's important to the general credibility of
20 these officers to note that there were really no real
21 indicators here.

22 We have a credit card purchase. They have an
23 emergency exchange voucher. The biggest indicators aren't
24 even present in this case. So I think really the entire
25 investigation is very questionable to begin with.

1 So I think those are important issues to note,
2 even though the government is going on a theory of pure
3 consent.

4 THE COURT: All right. Thank you. All right.

5 I'll take this matter under submission. I'll
6 await the points and authorities challenging the
7 admissibility of the phone records. And when I'm able to
8 rule on that, I'm sure that I can give you a decision on
9 the substantive issues which are before the Court.

10 Thank you very much.

11 COURTROOM ADMINISTRATOR: Please rise.

12 (The proceedings concluded at 11:01 a.m.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.



4/5/16

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date

I N D E X

GOVERNMENT'S WITNESSES:	PAGE
TONY MOORE	
Cross-Examination (Resumed)	180
By Ms. Gorman	
Redirect Examination By Ms. Rachow	227
Recross-Examination By Ms. Gorman	235
DEFENDANT'S WITNESSES:	PAGE
JAYSON HILL	
Direct Examination By Mr. Dogan	240
Cross-Examination By Ms. Rachow	257
Redirect Examination By Mr. Dogan	260
ERIKA RENEE DEAN	
Direct Examination By Ms. Gorman	262
Cross-Examination By Ms. Rachow	268
Redirect Examination By Ms. Gorman	275
Recross-Examination By Ms. Rachow	278